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ONTARIO LABOUR RELATIONS BOARD

ANNUAL REPORT 1985-86



ONTARIO LABOUR RELATIONS BOARD

<i>Chairman</i>	JUDGE R.S. ABELLA
<i>Alternate Chairman</i>	I.C.A. SPRINGATE
<i>Vice-Chairmen</i>	L.R. BETCHERMAN
	L. DUCHESNEAU-McLACHLAN
	D.E. FRANKS
	H. FREEDMAN
	R.A. FURNESS
	O.V. GRAY
	R.J. HERMAN
	R.D. HOWE
	P. KNOPF
	T.S. KUTTNER
	R.O. MACDOWELL
	M.G. MITCHNICK
	N.B. SATTERFIELD
	S.A. TACON

Members

B.L. ARMSTRONG	F.W. MURRAY
C.A. BALLENTINE	J.W. MURRAY
D.H. BLAIR	S. O'FLYNN
F.C. BURNET	P.J. O'KEEFFE
L.C. COLLINS	R.W. PIRRIE
W.A. CORRELL	K.V. ROGERS
W.G. DONNELLY	J.A. RONSON
M. EAYRS	M.A. ROSS
A.R. FOUCAULT	W.F. RUTHERFORD
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A. GRANT	M.A.F. STOCKTON
P.V. GRASSO	R.J. SWENOR
D.O. GRAY	E.G. THEOBALD
J. KENNEDY	W.H. WIGHTMAN
H. KOBRYN	J.P. WILSON
L. LENKINSKI	N.A. WILSON
R.D. McMURDO	R. WILSON
T. MEAGHER	

*Registrar and Chief
Administrative Officer*

Board Solicitors

D.K. AYNLEY
N.V. DISSANAYAKE,
F.W. McINTOSH-JANIS AND
K.M. PETRYSHEN

ONTARIO LABOUR RELATIONS BOARD

ANNUAL REPORT 1985-86





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Ontario
Labour Relations
Board

Commission
des relations
de travail de l'Ontario

Office of the
Chairman

Bureau du
président

400 University Avenue
Toronto, Ontario
M7A 1V4
416/965-4193

The Honourable William Wrye,
Minister of Labour,
400 University Avenue,
Toronto, Ontario.
M7A 1T7

Dear Minister:

It is my pleasure to provide to you the sixth Annual Report of the Ontario Labour Relations Board for the period commencing April 1, 1985 to March 31, 1986.

Sincerely,

Judge Rosalie S. Abella,
Chairman.

CHAIRMAN'S MESSAGE

This year has seen unprecedented activity and change at the Board. To meet the continued increase in the Board's caseload, a number of significant administrative changes have been undertaken. A dramatic change in scheduling, an increase in Board personnel, and a revision of the internal procedures have all been implemented to make the Board more accessible and effective. More extensive use of pre-hearing conferences, the scheduling of cases on consecutive days, and an increased reliance on the settlement efforts of Labour Relations Officers have combined to speed up the delivery of the adjudicative process. We are confident that these changes will enure to the benefit of the labour relations community and look forward to its continued cooperation in the ongoing efforts to enable the Board to maintain a high level of service and decision-making. As usual, we owe an enormous debt to the Registrar, Don Aynsley, the Manager of Administration, Virginia Robeson, the Manager of Field Services, Jack MacDonald, the Vice-Chairmen and Board members, the Labour Relations Officers, the Senior Solicitor, Nimal Dissanayake, the Chief Librarian, Clare Lyons, and to the tireless efforts of our support staff.

I INTRODUCTION

This is the sixth issue of the Ontario Labour Relations Board's Annual Report, which commenced publication in the fiscal year 1980-81. This issue covers the fiscal year April 1, 1985 to March 31, 1986.

The report contains up-to-date information on the organizational structure and administrative developments of interest to the public and notes changes in personnel of the Board. As in previous years, this issue provides a statistical summary and analysis of the work-load carried by the Board during the fiscal year under review. Detailed statistical tables are provided on several aspects of the Board's function.

This report contains a section highlighting some of the significant decisions of the Board issued during the year. A brief description of every Board matter that was subject to review by the courts during the year is provided. Since many of these court decisions are unreported, the summaries in the Board's Annual Report have been helpful to the practising bar. The report continues to provide a legislative history of the *Labour Relations Act* and notes any amendments to the Act that were passed during the fiscal year.

II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of a public hearing before a select committee of the Provincial Legislative Assembly. Although the establishment of a "Labour Court" was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee's report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

"... the shape and structure of the collective bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its 'judicial' role." (MacDowell, R.O., "Law and Practice before the Ontario Labour Relations Board, (1978), 1 Advocate's Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today — management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers — something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when disputes arise in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944). In his book, *The Ontario Labour Court 1943-44*, (Queen's University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court's early demise: —

"... the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944."

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a war time move by the Federal Government to centralize

labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over "property and civil rights." (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5)

The Act was subsequently amended so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, "opt in" to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations "in the same form and to the same effect as that . . . Act which may be passed by the Parliament of Canada at the session currently in progress . . ." This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board's role was fairly limited. There was no enforcement mechanism at the Board's disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lockout unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary to the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board's power was quite limited. The power to make certain declarations, determinations, or to grant consent to prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the Board's acquisition of the power to grant a trade union "successor" status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of "successor employers" was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

The Labour Relations Amendment Act, 1960, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" (*Report of The Royal Commission on Labour Management Relations in the Construction Industry*, March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" (*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry of Ontario*, May, 1976). (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31). Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, The Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created "duty of fair representation." This duty, imposed on trade unions, required them not to act in a manner which was arbitrary, discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make "cease and desist" orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and be enforceable as orders of the Court.

A major increase in the Board's remedial powers under the *Labour Relations Act* occurred in 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board's remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make "cease and desist" orders with respect to

any unlawful strike or lock-out. It was in 1975 as well, that the Board's jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, the *Labour Relations Amendment Act, 1980 (No. 2)*, S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer's final offer at the request of their employer. In June of 1983, the *Labour Relations Amendment Act, 1983*, S.O. 1983, c. 42, became law. It introduced into the Act section 71a, which prohibits strike related misconduct and the engaging of or acting as, a professional strike-breaker. To date the Board has not been called upon to interpret or apply section 71a.

In June of 1984, the *Labour Relations Amendment Act, 1984*, S.O. 1984, c. 34 was enacted. This Act deals with several areas. It gives the Board explicit jurisdiction to deal with illegal picketing or threats of illegal picketing and permits a party affected by illegal picketing to seek relief through the expedited procedures in sections 92 and 135, rather than the more cumbersome process under section 89. The Act also permits the Board to respond in an expedited fashion to illegal agreements or arrangements which affect the industrial, commercial and institutional sector of the construction industry. It further establishes an appropriate voting constituency for strike, lockout and ratification votes in that sector and provides a procedure for complaints relating to voter eligibility to be filed with the Minister of Labour. The new amendment also eliminates the 14 day waiting period before an arbitration award which is not complied with may be filed in court for purposes of enforcement.

There were no amendments to the *Labour Relations Act* during the fiscal year 1985-86.

THE FULL BOARD AND SENIOR STAFF



Front Row (left to right):

N. Dissanayake, R. Herman, R. Abella, C. Ballentine, L. Lenkinski, L.R. Betcherman, S. Tacon, J. Wilson, A. Grant, H. Kobryn, F. McIntosh-Janis.

2nd Row:

K. Rogers, M. Mitchnick, B. Armstrong, N. Satterfield, J. Kennedy, O. Gray, P. Grasso, D. Blair, R. Gallivan, F. Burnet, W. Murray, D. K. Aynsley, M. Stockton.

3rd Row:

W. Wightman, R. MacDowell, R. Pirrie, J. Murray, L. Collins, R. Swenor, S. O'Flynn, R. Howe, D. Franks, W. Rutherford, N. Wilson, I. Stamp, H. Freedman, I. Springate, J. Ronson.

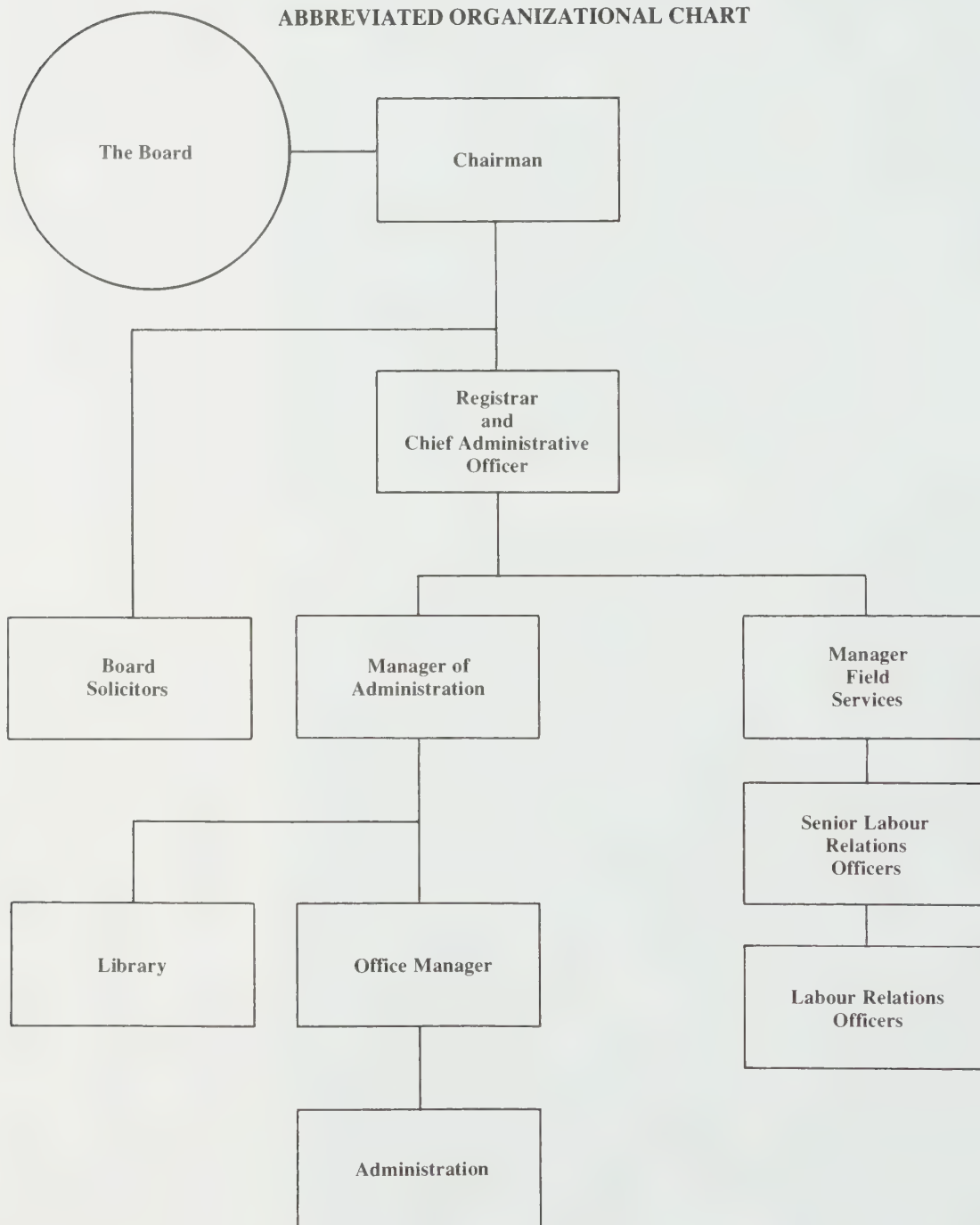
Missing:

R. Furness, P. Knopf, W. Correll, M. Eayrs, R. McMurdo, P. O'Keefe, M. Ross, E. Theobald, R. Wilson, T. Kuttner, T. Meagher, D. O. Gray.

III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:

ABBREVIATED ORGANIZATIONAL CHART



IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act*, R.S.O. 1980, c. 228, as follows:

“ . . . it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chairman and an Alternate Chairman, several Vice-Chairmen and a number of Members representative of labour and management respectively in equal numbers. At the end of the fiscal year the Board consisted of the Chairman, Alternate Chairman, 9 full time Vice-Chairmen, 5 part-time Vice-Chairmen and 35 Board Members, 10 full-time and 25 part-time. These appointments were made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Labour Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for the formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the Act, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not subject to appeal and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report from time to time. During the year under review Practice Note 5, dealing with “Service of Documents and Notification of Proceedings by Board” was amended.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, policemen or firemen, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 464. On the other hand, the Board has full jurisdiction over employees employed by municipalities and hospitals. A distinct piece of legislation, the *Hospital Labour Disputes Arbitration Act*, stipulates special laws that govern labour relations of hospital employees, particularly with respect to the resolution of collective bargaining

disputes and the *Successor Rights (Crown Transfers) Act*, R.S.O. 1980, c. 489 provides for application to the Board where there is a transfer of an undertaking from the crown to an employer and vice versa. The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. A similar jurisdiction is conferred on the Board by section 134b of the *Environmental Protection Act*, R.S.O. 1980, c. 141, proclaimed in November 1983 by S.O. 1983, c. 52, s. 22. From time to time the Board is called upon to determine the impact of the *Canadian Charter of Rights and Freedoms* on the rights of parties under the *Labour Relations Act*.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Legal Services.

(a) ADMINISTRATIVE DIVISION

The Registrar and Chief Administrative Officer is the senior administrative official of the Board. He is responsible for supervising the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. He determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings, the holding of votes or particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload within the resources allocated to it underpins much of its contribution to labour relations harmony in this province.

The Manager of Administration and the Manager of Field Services report directly to the Registrar and Chief Administrative Officer. The former manages the day-to-day administrative operation and the latter the field services. An Administrative Committee comprised of the Chairman, Alternate Chairman, Registrar and Chief Administrative Officer, Manager of Administration, Manager of Field Services and a Solicitor meets regularly to discuss all aspects of Board administration and management.

The administrative division of the Board includes: office management, case monitoring, and library services.

1. Office Management

An administrative support staff of approximately 60, headed by an Office Manager who reports to the Manager of Administration and a Senior Clerical Supervisor, process all applications received by the Board.

2. Case Monitoring

The Board continues to rely on its computerized case monitoring system. Data on each case are coded on a day-to-day basis as the status changes. Reports are then issued on a weekly and monthly basis on the progress of each proceeding from the filing of applications or complaints to their final disposition.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide statistical information to senior management that is used as a basis for recommendations regarding improvements or

changes in Board practices and procedures which can lead to increased productivity and better service to the community.

3. Library Services

The Ontario Labour Relations Board Library employs a staff of 3, including a fulltime professional librarian. The Library staff provides research services for the Board and assists other library users.

The Board Library maintains a collection of approximately 1200 texts, 25 journals and 30 case reports in the areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The library has approximately 4500 volumes. The collection includes decisions from other jurisdictions, such as the Canada Labour Relations Board, the U.S. National Labor Relations Board and provincial labour boards from across Canada.

The Library staff maintains a computer index to the Board's Monthly Report of decisions. It provides access by subject, party names, file number, statutes considered, cases cited, date etc. The system also provides a microfiche index to the decisions. It permits Board members and staff prompt and accurate access to previous Board decisions dealing with particular issues under consideration. The Board is the first labour relations tribunal in Canada to develop and implement this type of system. It has been reviewed by officials from a number of labour relations boards and may be used as a model in the development of other computerized retrieval systems.

(b) FIELD SERVICES

In view of the Board's continuing belief that the interests of parties appearing before it, and labour relations in the province generally, are best served by settlement of disputes by the parties without the need for a formal hearing and adjudication, the Board attempts to make maximum use of its labour relations officers' efforts in this area. Responsibility for the division lies with the Manager of Field Services. In promoting overall efficiency, the manager puts emphasis upon the setting and monitoring of performance standards, case assignments, staff development and maintaining liaison with the Board. He is assisted by three Senior Labour Relations Officers, each of whom is assigned a team of officers. In addition to undertaking their share of the caseload in the field, these Senior Labour Relations Officers are responsible for providing guidance and advice in the handling of particular cases, managing the settlement process on certification days on a rotating basis, and assisting with the performance appraisals of the officers. In addition to the Labour Relations Officers, the Board employs two Returning/Waiver Officers. They conduct representation votes directed by the Board, as well as last offer votes directed by the Minister of Labour. (See Sec. 40 of the Act) They also carry out the Board's programme for waiver of hearings in certification applications.

The Board's field staff continued its excellent record of performance throughout the fiscal year under review. In relation to complaints under the *Labour Relations Act* and the *Occupational Health and Safety Act*, the officers handled a total caseload of 1049 assignments, of which 86.1 percent were settled by the efforts of the officers. The officers handled a total of 856 grievances in the construction industry of which 92.4 percent were settled. Of 309 certification applications dealt with under the waiver of hearings programme, the officers were successful in 215 or 70 percent.

The Alternate Chairman of the Board supervises the activities of the field officers, and along with the Manager of Field Services and a Board Solicitor, meets with the officers on a monthly

basis to deal with administrative matters and review Board jurisprudence affecting officers' activity and other policy and legal developments relevant to the officers' work.

(c) **LEGAL SERVICES**

Legal services to the Board are provided by the Solicitors' Office. The office consists of three Board solicitors, who report directly to the Chairman. The Board also employed two articling students to assist the solicitors in carrying out the functions of the Solicitors' Office.

The Solicitors' Office is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chairman, Vice-Chairman and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Solicitors' Office is responsible for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the solicitors. When preparation or revision of practice notes, Board Rules or forms become necessary, the solicitors are responsible for undertaking those tasks.

The solicitors are active in the staff development programme of the Board and a solicitor regularly meets with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, a solicitor prepares written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The solicitors also advise the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Solicitors' Office is the representation of the Board's interests in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, a solicitor, in consultation with the Chairman, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Solicitors' Office is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

The Solicitors' Office is responsible for all of the Board's publications. One of the Board's solicitors is the Editor of the Ontario Labour Relations Board Reports, a monthly series of selected Board decisions which commenced publication in 1944. This series is one of the oldest labour board reports in North America. In addition to reporting Board decisions, each issue of the Reports contains a section listing all of the matters disposed of by the Board in the month in question, including the bargaining unit descriptions, results of representation votes and manner of disposition.

The Solicitors' Office also issues a publication entitled "Monthly Highlights." This publication, which commenced in 1982, contains scope notes of significant decisions of the Board issued during the month and other notices and administrative developments of interest to the labour relations community. This publication is sent free of charge to all subscribers to the Ontario Labour Relations Board Reports. The Solicitors' Office is also responsible for periodically revising the publication entitled "A Guide to the Labour Relations Act", which is an explanation in layman's terms, of the significant provisions of the Act. The latest revision took place in March, 1986, to reflect the amendments to the Act.

MEMBERS OF THE BOARD

At the end of the fiscal year 1985-86, the Board consisted of the following members:

JUDGE ROSALIE S. ABELLA *Chairman*

Judge Abella assumed office as chairman of the Board on September 19, 1984. After graduating from University of Toronto Law School in 1970, she practised law until her appointment in 1976 as a judge of the Ontario Provincial Court (Family Division). In addition to carrying out her judicial functions, Judge Abella's professional background includes: Member, Ontario Public Service Labour Relations Tribunal, 1975-76; Commissioner, Ontario Human Rights Commission, 1975-80; Member, Premier's Advisory Committee on Confederation, Ontario, 1977-82; Co-Chairman, University of Toronto Academic Discipline Tribunal, 1977-1984; Director, International Commission of Jurists (Canadian Section), 1982; Director, Canadian Institute for the Administration of Justice, 1983; and Chairman, Report on Access to Legal Services by the Disabled, 1983.

In 1983 Judge Abella was appointed as Sole Commissioner, Royal Commission on Equality in Employment. The report of this Commission was submitted to the federal Government in November of 1984.

IAN C.A. SPRINGATE *Alternate Chairman*

Mr. Springate had been a Vice-Chairman of the Board since May of 1976 before being appointed as the Board's Alternate Chairman in October of 1984. He has degrees of B.A. with distinction, (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chairman. Mr. Springate taught in the M.B.A. programme at McMaster University as a part-time lecturer in industrial relations from 1973 to 1978. He is an experienced arbitrator and in the year under review taught a course in Labour Law and Labour Standards at Woodsworth College, University of Toronto. From February 1984 to January 1985, he served as Acting Chairman of the Crown Employees Grievance Settlement Board.

LITA-ROSE BETCHERMAN *Vice-Chairman*

Dr. Betcherman was appointed as a part-time Vice-Chairman in January 1985. She holds degrees of B.A. (1948, University of Toronto); M.A. (1961, Carlton University); and Ph.D. (1969, University of Toronto). For many years she has served the labour relations community as arbitrator, both interest and grievance, and has also acted as referee under the Ontario *Employment Standards Act*. From 1966 to 1972 she was Director of the Women's Bureau, Ontario Ministry of Labour. In 1972 she was appointed chairman of an inter-ministerial committee which prepared the Green Paper on Equal Opportunity Programs for Women in the Public Service. She has been a member of the Ontario Human Rights Commission, Ontario Press Council, Education Relations Commission, and the Judicial Council of Ontario. She is the author of two books which deal respectively with the history of fascism and communism in Canada in the interwar period.

LOUISETTE DUCHESNEAU-McLACHLAN *Vice-Chairman*

Ms. Duchesneau-McLachlan was appointed a part-time Vice-Chairman in January, 1986. Ms. Duchesneau-McLachlan, who holds degrees of B.A. and LL.B. from the University of Ottawa, has practised law in North Bay, Ontario, since 1973. She has served as fact-finder for the Ontario Education Relations Commission and as an adjudicator under federal labour legislation. She is also an experienced labour arbitrator.

D.E. (DON) FRANKS *Vice-Chairman*

Mr. Franks is a graduate of McMaster University (B.A. 1960) and Osgoode Hall Law School (LL.B. 1967). Joining the Board in 1969, he served as its Solicitor. In 1972 Mr. Franks was appointed a Vice-Chairman of the Board. He occupied this position until 1975 when he was appointed Vice-Chairman of the Construction Industry Review Panel, which position he held until May, 1980. Mr. Franks also served, during 1975-76, as the Commissioner on the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry in Ontario. The report prepared by him led to the amendment of *The Labour Relations Act* in 1977 which provided for province-wide bargaining in the construction industry. Mr. Franks was also involved in the implementation and monitoring of the province-wide bargaining scheme. In 1978 he was appointed chairman of a conciliation board by the government of Saskatchewan, which resolved a two-month province-wide strike by the Labourers' Union. Mr. Franks returned to the Labour Relations Board as a Vice-Chairman in May of 1980. He resigned from the Board in March 1986. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

HARRY FREEDMAN *Vice-Chairman*

Mr. Freedman was appointed a Vice-Chairman of the Board in September, 1984. Having acquired the degrees of B.A. (University of Toronto, 1971) and LL.B. (Osgoode Hall Law School, 1975), Mr. Freedman was called to the Ontario bar in 1977. He practised labour law with a Toronto law firm until April, 1979, when he became the Ontario Labour Relations Board's Senior Solicitor. He held this position until his appointment as Vice-Chairman. Mr. Freedman has been associated with Ryerson Polytechnical Institute for several years as a lecturer in industrial relations, and taught a seminar course in grievance arbitration at Osgoode Hall Law School. He has authored several papers on labour relations practice in Ontario, and actively participated in the labour law continuing education programme of the Law Society of Upper Canada and is an instructor in the Administrative Law and Charter of Rights section of the Law Society's Bar Admission Course. Mr. Freedman also acts as a grievance arbitrator.

R.A. (RON) FURNESS *Vice-Chairman*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his LL.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chairman in 1969.

OWEN V. GRAY *Vice-Chairman*

Mr. Gray joined the Board as a Vice-Chairman in October, 1983. He is a graduate of Queen's University, Kingston, (B.Sc. Hons, 1971) and the University of Toronto, (LL.B. 1974). After his call to the Ontario Bar in 1976, Mr. Gray practised law with a Toronto law firm until his appointment to the Board.

ROBERT J. HERMAN *Vice-Chairman*

Mr. Herman was appointed a Vice-Chairman of the Board in November, 1985, and was at that time a Solicitor for the Board. He is a graduate of the University of Toronto (B.Sc. 1972, LL.B. 1976) and received his LL.M. from Harvard University in 1984. Mr. Herman has taught courses in various areas of the law, both at Ryerson Polytechnical Institute and the Faculty of Law, University of Toronto.

ROBERT D. HOWE *Vice-Chairman*

Mr. Howe was appointed to the Board as a part-time Vice-Chairman in February, 1980 and became a full-time Vice-Chairman effective June 1, 1981. He graduated with a LL.B. (gold-medalist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 he was a law professor at the Faculty of Law, University of Windsor. From 1977 until his appointment to the Board, he practised law as an associate of a Windsor law firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator. During May-August, 1984, Mr. Howe served as Chairman of the Board in an acting capacity.

PAULA KNOPF *Vice-Chairman*

Mrs. Knopf joined the Board as a part-time Vice-Chairman in August, 1984. She graduated with a B.A. from the University of Toronto, 1972, and LL.B. from Osgoode Hall Law School, 1975. Upon her call to the Ontario bar in 1977, she practised law with a Toronto law firm briefly before commencing her own private practice with emphasis in the area of labour relations. A former member of the faculty of Osgoode Hall Law School, Mrs. Knopf is an experienced fact-finder, mediator and arbitrator.

THOMAS KUTTNER *Vice-Chairman*

Mr. Kuttner was appointed a part-time Vice-Chairman of the Board in October, 1985. He is an experienced arbitrator and mediator, and has several publications related to labour law to his credit. Mr. Kuttner has been on the Faculty of Law, University of New Brunswick, since 1979. He has held several positions in administrative tribunals in New Brunswick, including Vice-Chairman, Industrial Relations Board and Vice-Chairman, Fishing Industry Relations Board.

RICHARD (RICK) MacDOWELL *Vice-Chairman*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), a M.Sc. (with Distinction) in Economics from the London School of Economics & Political Science (1970) and a LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chairman in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit. During May-August, 1984, Mr. MacDowell served as the Board's Alternate Chairman in an acting capacity.

MORT. G. MITCHNICK *Vice-Chairman*

Mr. Mitchnick was appointed as a full time Vice-Chairman of the Board in November 1979. A native of Hamilton, Ontario, Mr. Mitchnick graduated with a B.A. from McMaster University in 1967 and completed his LL.B. at the University of Toronto law School in 1970. After his call to the Bar in 1972, he engaged in the practice of labour law with a Toronto law firm until his appointment to the Board. Mr. Mitchnick reverted to part-time status with the Board as of November 1985, and shares his time with a private arbitration and mediation practice together with various forms of legal scholarship.

NORMAN B. SATTERFIELD *Vice-Chairman*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chairman. Mr. Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He has been involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years. Mr. Satterfield is a past Director of the Construction Labour Relations Association of Ontario and a past Member of the National Industrial Relations Committee of the Canadian Manufacturers' Association.

SUSAN A. TACON *Vice-Chairman*

Ms. Tacon joined the Labour Relations Board as a Vice-Chairman in July, 1984. She holds a B.A. degree (1970) from York University and LL.B. (1976) and LL.M. (1978) degrees from Osgoode Hall Law School. At the time of her appointment to the Board she was employed as employee relations officer at York University and was also a part-time faculty member at Osgoode Hall Law School. She is also an experienced arbitrator. Ms. Tacon has several publications, including a text and several articles in law journals.

Members Representative of Labour and Management**BROMLEY L. ARMSTRONG**

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in February of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr. Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board. Mr. Armstrong was honoured by the Government of Jamaica when he was appointed a Member of the Order of Distinction in the rank of officer, in the 1983 Independence Day Civil Honours List.

CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

DONALD H. BLAIR

Mr Blair was appointed as a part-time member of the Board representing management in March, 1983. Mr. Blair retired from Dominion stores after 31 years of service, the last 15 years as Director of Labour Relations. In May of 1983, Mr. Blair established a firm specializing in providing industrial relations consulting services. He has been a member of the Personnel Association of Toronto since 1960 and was a Director of the same during 1965-67. He was also Vice-Chairman of the Board of Directors of the Central Ontario Industrial Relations Institute from 1979 to 1983.

FRANK C. BURNET

On December, 1983, Mr. Burnet was appointed a part-time Board Member representing management. After graduating from the University of Saskatchewan (B.A. Economics, 1940) Mr. Burnet was engaged in personnel capacities in several corporations in Ontario and Quebec. In 1970 he joined Inco Ltd., as its Director of Industrial Relations responsible for all Canadian Operations. From 1972 until his retirement in 1982, Mr. Burnet held the position of Vice-President Employee Relations, responsible for employee relations activities in Canada, U.S., U.K., and other foreign operations. The many offices Mr. Burnet has held include: Chairman, National Industrial Relations Committee of the Canadian Manufacturers' Association, 1978-81; Governor and Member of the Executive Committee of the Canadian Centre for Occupational Health and Safety, 1982-83; Member of OECD Joint Labour-Management team studying technological change in the U.S. (1963) and incomes policy in the U.K. and Sweden, (1965).

LEONARD C. COLLINS

Mr. Collins was appointed a part-time Member of the Board representing labour in November, 1982. Prior to joining the Board Mr. Collins had been very active in the trade union movement in Ontario. From 1945 to 1960 he held various positions with Local 232 of the United Rubber Workers, including the positions of Vice-President from 1950 to 1954 and President from 1954 to 1960. In 1960 he was appointed International Field Representative for the United Rubber Workers and later served as acting Director of District 6.

WILLIAM A. CORRELL

A graduate of McMaster University (B.A. 1949), Mr. Correll was appointed in January, 1985, as a part-time Board Member representing management. He joined the Board with an impressive background in the personnel field. Having held responsible personnel positions at Stelco, Atomic Energy of Canada Limited and DeHavilland Aircraft of Canada Limited for a number of years, Mr. Correll joined Inco Limited in 1971. After serving as that company's Assistant Vice-President and Director of Industrial Relations, in 1977 Mr. Correll became Vice-President of Inco Metals Company. He has lectured on personnel and management subjects at community college and university level and has conducted seminars for various management groups. He is active as management representative on boards of arbitration and on various management organizations.

W. GORDON DONNELLY

Mr. Donnelly was first appointed a part-time Board Member representing management in 1979. Having obtained a B.A. (1939) and B.C.L. (1947) from McGill University of Montreal, he practised law in the Province of Quebec. In 1947 he joined the Aluminum Company of Canada Limited, where he progressed from Industrial Relations Supervisor, Shawinigan Works, to Vice-President Personnel and Industrial Relations, Alcan Products Limited, Toronto, Ontario 1970. Mr. Donnelly left the Board in 1984 but was re-appointed as a part-time Board Member in January, 1986.

MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. Mr. Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he has held include: Director of Labour Relations of the Ontario Federation of Construction Associations; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel; Director of Industrial Relations, Kaiser Canada; Manager of Industrial Relations of the SNC Group; and Executive Director of the Construction Employers Co-ordinating Council of Ontario. Mr. Eayrs is a past Chairman of the

National Labour Relations Committee of the Canadian Construction Association, and is presently a vice-chairman of the Joint Labour-Management Construction Industry Advisory Board. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

ANDRE ROLAND FOUCAULT

Mr. Foucault was appointed a part-time Board Member representing labour in January, 1986. A member of the Canadian Paper Workers Union since 1967, he has held several elected positions within that union, including that of first Vice-President. In February 1982, Mr. Foucault joined the staff of the Canadian Paperworkers Union as a National Representative. In 1976 he was appointed to the position of Programmes Co-ordinator of the Ontario Federation of Labour.

ROBERT J. GALLIVAN

In January, 1985, Mr. Gallivan was appointed a part-time Board Member representing management. After holding several senior personnel positions with C.I.L. Inc., Mr. Gallivan became that company's national Employee Relations Manager in 1970 and held this position for 13 years. For many years, he has been an active member of various management organizations, including the Canadian Chamber of Commerce and the Canadian Manufacturers' Association. Mr. Gallivan continues to serve as management representative on various government boards and commissions on a part-time basis.

ANDREW GRANT

Mr. Grant was appointed a part-time Board Member representing management in April, 1983. After a period of employment at Gulf Canada, Mr. Grant joined B.P. Canada in 1960. Mr. Grant has held offices in various committees including the National Board of Directors of the Packaging Association of Canada; Chairman, Industry Committee on Metric Conversion and Corporate Representative and Chairman of the Joint Canadian/U.S. Technical Committee of the Packaging Institute, U.S.A. He retired from his position at the Board in March, 1986.

PAT V. GRASSO

Appointed a part-time member of the Board representing labour in December, 1982, Mr. Grasso has been active in the labour movement in Ontario for many years. Having held various offices in District 50 of the United Mine Workers of America, he was appointed Staff Representative in 1958, and Assistant to the Regional Director for Ontario in 1965. In 1969, Mr. Grasso became the Regional Director for Ontario and was elected to the International Executive Board. When District 50 merged with the United Steelworkers of America in 1972, he became Staff Representative of the Steelworkers in charge of organizing in the Toronto area. In January 1982, Mr. Grasso was transferred to the District 6 office of the Steelworkers and appointed District Representative in charge of co-ordinating, organizing and special projects.

DEAN O. GRAY

Mr. Gray was appointed a part-time Board Member representing management in October, 1985. After holding several responsible personnel and industrial relations positions in corporations in the steel industry in the U.S. and Canada, Mr. Gray became Vice-President Industrial Relations of Reed Paper Company in 1973, and Vice-President Industrial Relations of Abitibi-Price Inc. in 1979. From 1981 he has been employed as a consultant on industrial relations matters.

JOSEPH KENNEDY

In May, 1983, Mr. Kennedy was appointed a part-time Board Member representing labour. He has been a member of Local 793 of the International Union of Operating Engineers for over 30 years and has held various offices in that Local. At present he holds the position of Business Manager of Local 793.

HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that Union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario 1958-62; Secretary Treasurer of the same council, 1962; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and Member of the Advisory Council on Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

LOUIS LENKINSKI

In August of 1984, Mr. Lenkinski was appointed a part-time Board Member representing labour. A member of the Upholsterers' International Union for many years, he served as business representative of that union from 1958 to 1969. Since 1969, he has held the positions of Project Director and Executive Secretary to the Labour Council of Metropolitan Toronto. In 1975 he became Executive Assistant to the Ontario Federation of Labour. Mr. Lenkinski has frequently served as labour representative on arbitration and conciliation boards and has also represented parties in proceedings before the Labour Relations Board.

ROBERT D. McMURDO

Since April of 1984, Mr. McMurdo has served as a part-time Board Member representing management. An honours graduate in business administration (1953) from University of Western Ontario, Mr. McMurdo has held many industry related offices including: President of the London & District Construction Association, President of the Construction Safety Association of Ontario and President of the Ontario General Contractors Association. He is the President of McKay-Cocker Construction Limited and McKay-Cocker Structures Limited of London and is currently a member of the Ministry of Labour Construction Industry Advisory Board.

TERRY MEAGHER

Mr. Meagher was appointed a part-time Board Member representing labour in October, 1985. From 1970 to 1984, Mr. Meagher served as Secretary Treasurer of the Ontario Federation of Labour. Prior to that he has held the positions of Business Agent, Local 280 of the Beverage Dispensers and Bartenders Union and Executive Secretary of the Labour Council of Metropolitan Toronto. He has also served as Vice-Chairman of the Canadian Labour Congress, Human Rights Committee and member of the Canadian Labour Congress International Affairs Committee.

F. WILLIAM MURRAY

Mr. Murray was a part-time Member of the Board representing management from 1965 to February of 1980, when he assumed a full-time position on the Board. From 1948 to 1963, Mr. Murray was employed as the Manager of the Motor Transport Industrial Relations Bureau, which served as the labour relations representative for groups of companies in Ontario and Quebec. In

1963 he formed his own industrial relations consulting firm and was active in industrial relations consulting work for many trucking firms and related industries. Since 1971 Mr. Murray has been a Member of the Public Service Staff Relations Board. He is also a Member of the Board of Trade Industrial Relations Committee and the Personnel Association of Toronto.

JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics as well as an M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second World War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies in several parts of the country. He was a vice-president of Labatt Brewing Company for several years before his retirement in January 1982.

SEAN O'FLYNN

Upon emigrating to Canada in 1967, Mr. O'Flynn became the co-ordinator of Niagara College in Welland and helped to formulate a credit programme in labour studies, one of Ontario's first such programmes. Since 1974 Mr. O'Flynn has held several key positions with the Ontario Public Service Employees Union. He was president of that union until November 1984, when he chose not to seek re-election. Mr. O'Flynn has been very active on behalf of the trade union movement in Ontario and since 1984 has been a Vice-President of the Ontario Federation of Labour. His academic qualifications include: Dip. Econ. Pol. Science (Oxford University, England), B.Sc. (Econ.) (University of Wales) and M.Ed. (New York University, Buffalo, N.Y.). He was appointed a full-time Board Member representing labour in January, 1985.

PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britain and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of C.U.P.E. and presently holds the office of Ontario Regional Director of C.U.P.E., and is also a Vice-President of the Ontario Federation of Labour.

ROSS W. PIRRIE

Mr. Pirrie was appointed a part-time Board Member representing management in January, 1985. Having been employed by Canadian National Railways for ten years, in 1960 he joined Shell Canada Limited. At Shell Canada, Mr. Pirrie held a wide range of managerial positions in general management, occupational health, human resources and industrial relations before retiring in 1984. Mr. Pirrie holds the degree of B.A. (Psychology) from the University of Toronto.

KENNETH V. ROGERS

Mr. Rogers was appointed in August, 1984, as a part-time Board Member representing labour. From 1967-1976, he was a representative with the International Chemical Workers Union and served as Secretary-Treasurer of the Canadian Chemical Workers Union during 1976-1980. Since the Energy and Chemical Workers Union was founded in 1980, Mr. Rogers has been its Ontario Co-Ordinator. He is a former Vice-President of the Ontario Federation of Labour.

JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and a LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

WILLIAM F. RUTHERFORD

After serving as a full-time Member of the Board representing labour for seven years, Mr. Rutherford became a part-time Board Member in 1986. He was the Houdaille Plant Chairman for the UAW for 37 years. He was a Member of the Oshawa District Labour Council between 1944 and 1977 and a Member of the Canadian UAW Council during 1948 and 1971. Mr. Rutherford has served on the Board of Referees of the Unemployment Insurance Commission for 12 years.

INGE M. STAMP

Appointed a full-time Board Member representing management in August, 1982, Ms. Stamp comes to the Board with many years of experience in the personnel and labour relations field at Bechtel Canada Limited. Having joined that firm as Senior Secretary to the Vice-President of Labour Relations in 1969, Ms. Stamp became Administrative Assistant in 1974 and Labour Relations Assistant in 1975. In 1977 she was appointed labour relations representative, a post she held prior to her appointment to the Board. In this capacity, Ms. Stamp was appointed, by the Industrial Contractors Association of Canada, as a member of several employer bargaining agencies designated to negotiate collective agreements on behalf of management. Ms. Stamp has been very active in the functions of the Industrial Contractors Association of Canada and since 1979 has served as treasurer responsible for the General Funds and the Ontario Industry Funds.

MALCOLM STOCKTON

Mr. Stockton was appointed a part-time Board Member representing management in October, 1985. He earned a law degree from Osgoode Hall Law School in 1973 and was called to the Ontario Bar in 1975. Since then he has engaged in the practice of law in Niagara Falls, Ontario. He has served as a fact-finder, mediator, and arbitrator for the Education Relations Commission since 1976.

ROBERT J. SWENOR

Mr. Swenor was appointed as a part-time Board Member in February, 1982, to represent management. Mr. Swenor, who holds the degrees of B.A. and M.B.A. from McMaster University and a certificate in Metallurgy of Iron and Steel, has been employed with Dofasco Inc., Hamilton since 1970 and is presently its Vice-President, Personnel. He is a member of CMA's National and

Provincial Industrial Relations Committees and the Ontario Chamber of Commerce Employer/Employee Relations Committee.

E.G. (TED) THEOBALD

Mr. Theobald was appointed as a part-time Board Member representing labour in December, 1982. From 1976 to June, 1982, he was an elected member of the Board of Directors of O.P.S.E.U., and during this period served a term as Vice-President. A long time political and union activist, Mr. Theobald has served as President and Chief Steward of a 600 member local union. He has served on numerous union committees and has either drafted or directly contributed to several labour relations related reports. He is experienced in grievance procedure and arbitration.

W.H. (BILL) WIGHTMAN

Mr. Wightman was first appointed to the Board in 1968, becoming a full-time member in 1977, and resigning from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently, he serves as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canadian Manpower and Immigration Council, the Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He was a founding member of the McMaster Medical Centre Advisory Council on Occupational Health and Safety. His writing credits include papers presented at the World Employment Conference in Geneva and symposia at Vienna and Panama City. He is a graduate of Clarkson College (BBA '50) and Columbia University (MS '54) where he lectured while engaged in doctoral studies.

JAMES P. WILSON

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. Prior to joining the Board he served as the Labour Relations Consultant to the Electrical Contractors Association of Ontario for 10 years. Mr. Wilson has served as the President of the Electrical Contractors Association of Ontario, Charter Member of the Canadian Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management.

NORMAN A. WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of the Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.

ROGER WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in August, 1984. Mr. Wilson has had a long association with the United Steelworkers of America, becoming the first Vice-President of Local 14863 in 1974 and its President in 1978. Since 1982, he has held the position of Chief Steward of Local 8562 of the Steelworkers. He is presently Reeve of the Township of Hope and a member of Northumberland County Council.

V HIGHLIGHTS OF BOARD DECISIONS

No collective agreement where memorandum not ratified according to its terms. Continuation of lockout held not unlawful.

For many years the major Ontario breweries had engaged in industry bargaining with the various unions which represented their employees. In the sets of negotiations which took place in 1978, 1980, and 1982, the parties agreed upon a ratification clause under which the memorandum of settlement was required to be ratified by each bargaining unit. In other words, employees in any one unit could veto the settlement by not ratifying. In the 1984-1985 negotiations, all of the employers' offers included that ratification clause. After approximately three months of bargaining, the parties remained in disagreement in a number of areas, including technological change. On February 26, 1985, the employers lawfully locked out all of the employees in the twelve bargaining units covered by the negotiations. However, with the assistance of a mediator, a memorandum of settlement, including the impugned ratification clause, was signed on March 15, 1985. It was ratified by all but two of the bargaining units. The employers refused to permit any employees to return to work and took the position that the lockout would continue with respect to all employees until a settlement was ratified by all twelve bargaining units.

The applicant unions sought a declaration of unlawful lockout under s. 93. The applicants urged the Board to declare the ratification clause to be null and void and to direct the employers to end the lockout and sign collective agreements (minus the ratification clause) with respect to each of the units that had ratified the settlement. It was contended that the failure to do so constituted bad faith bargaining and further that, as a matter of law, collective agreements had come into force with respect to the units that had ratified the settlements.

The Board stated that, while employers can lawfully seek to bargain on an industry-wide basis, as a general rule each union which holds bargaining rights can insist that collective bargaining take place in respect of each individual bargaining unit for which it holds bargaining rights. However, unions may agree to broader-based bargaining at the outset of negotiations, or may begin negotiations on a separate basis but later transform those negotiations into something more akin to industry negotiations by, for example, agreeing to a ratification clause of the type described above. Such a clause serves a legitimate labour relations purpose, but also carries the risk that the industry-wide settlement may be vetoed by one or more of the units. Assuming, without deciding, that a union that agrees to such a ratification clause is legally entitled to insist upon returning to bargaining on an individual bargaining unit basis when such a veto has occurred, the Board held that it did not follow that in such circumstances s. 15 required the employers to offer to each individual unit exactly the same terms as here contained in the vetoed settlement.

The Board noted that employers may well be willing to make concessions in bargaining in order to obtain a ratification clause of that type. If an employer is not to have the benefit of such a clause, he may be lawfully entitled to revise his offer and to refuse to offer (or ratify) the terms he was willing to offer and ratify in the context of industry bargaining. Under the circumstances, the Board was not prepared to strike down the ratification clause and impose the collective agreement upon the employers, for to do so would be to assist the applicants in reneging on an agreement which they entered into with full knowledge of its possible consequences. Since the memorandum had not been ratified in accordance with its terms, the Board concluded that no collective agree-

ments had come into force. In the result the Board concluded that the continuation of the lockout with respect to all of the employees was not unlawful. *Molson Ontario Breweries Limited*, [1985] OLRB Rep. April 558.

Breach of union by-laws not necessarily a breach of referral duty

This was a complaint under s. 89 of the Act, alleging that the respondent union had violated its by-laws and s. 69 of the Act by effectively preventing the complainant from being “name hired” on a pipeline construction project. The evidence was clear and uncontradicted that in the spring of 1983, the union adopted a set of by-laws to deal with its responsibilities in running its hiring hall and that the by-laws permitted name-hiring. The complainant was anxious to obtain a job in the particular project. However, his chances of getting a job by a straight union referral were not good, since he was 300th on the out of work list. Therefore he wished to approach the company directly and convince the company to “name hire” him.

At the pre-job conference between the company and union, the union agreed to six name hires requested by the company. This did not include the complainant. The union then requested and the company agreed, that there would be no further name hires on the project. When the company informed the complainant that he could not be name hired because of the agreement, the complainant took his complaint to the union’s Executive Board. The union gave him an “employee request form” which the company could have used to make a name hire request and informed him that it would be seeking a legal opinion on whether the company could still make a request despite the agreement. The union subsequently received an opinion from its lawyers to the effect that the by-laws were applicable to the project and that if the company made further requests for name hires, the union would be obliged to honour them. Through what the Board found to be a misunderstanding, the gist of the legal opinion was not conveyed to the complainant and he was left with the impression that no further name hires would be accepted in the future. As a result, the complainant abandoned his efforts at being name hired. In this complaint, the complainant submitted that the by-laws were binding on the union and that the by-laws did not permit the union to limit the number of name hires and prevent an individual from being hired. He claimed that such conduct by the union amounted to discrimination.

The Board stated that, even if it assumed, without deciding, that the union’s actions were contrary to the by-laws, it still had to determine whether such actions were arbitrary, discriminatory, or in bad faith with regard to the complainant. The union’s policy and decision to limit the number of name hires is a conscious policy adopted to protect its members on the out-of-work list. This is an established practice of the union used on pipeline projects as well as other projects. The Board found no evidence to establish that the union acted arbitrary, discriminatorily or in bad faith. While noting that the union’s failure to accurately convey to the complainant the opinion of its lawyers was unwise and unprofessional, the Board did not consider such conduct to be within the ambit of s. 69. *Donald Vasseur, re Labourers Union, Local 1059*, [1985] OLRB Rep. April 615.

“Reasonable employee expectations” used as test to determine extent of employee privileges frozen

This was an unfair labour practice complaint, which arose out of the termination of a substantial number of employees of the employer as part of the employer’s programme of restructuring its overall operations. The announcement of the lay-offs affected 116 employees represented by the complainant union at the location in question. It was not disputed that at the time of the terminations the statutory freeze was in operation with respect to that location. The union alleged that the employer action constituted a breach of ss. 66 and 79 of the Act. Dealing with the alleged contravention of s. 66, the Board was satisfied on the evidence that the real reason and only reason

for the terminations was the explanation offered, i.e. the economic justification. The evidence did not disclose that the employer either knew of, or took into account, the employees' union affiliation or activity in making the decision to terminate or in selecting individuals for termination. On the contrary, the evidence was that the selection of employees for termination proceeded on the basis of established company practice, namely, to utilize seniority and permit "bumping" by more senior employees capable of performing duties in other classifications.

Turning to the statutory freeze violation aspect of the complaint, the Board reviewed the "business as before" approach the Board has usually taken. Noting the specific language in s. 79(2) which was the provision applicable in this case, the Board concluded that, since the freeze includes the employees' privileges, it is the scope given to employees' privileges which circumscribes the otherwise virtually unlimited reach of the rights of an employer in the transition to a collective bargaining regime. The Board noted that while the "business as before" formula is readily applicable to situations where an established pattern or employer practice exists, that approach is not very helpful in dealing with "first time events", whether or not announced prior to the freeze.

The Board considered that it was appropriate, rather than concentrating on "business as before", to assess the privileges of the employees which are frozen, thereby restricting employer rights, by focussing on the "reasonable expectations" of employees. The "reasonable expectations" approach responds to situations where a pattern exists, as well as to first time events.

Noting that this approach is a common thread running through prior Board decisions, the Board stated that it was expressly articulating the test in the instant case. Prior Board decisions, which affirm the right of an employer to implement programmes during the freeze, where such programmes were adopted and communicated to the employees before the onset of the freeze, and those dealing with "lay-offs", are compatible with the "reasonable expectations", approach.

Applying this approach to the facts before it, the Board noted that a programme to modernize and centralize the operations had commenced back in 1980. New technology was being introduced to increase efficiency. These measures had resulted in some lay-offs in the past. In the circumstances, the employees could reasonably have expected lay-offs. Therefore, the terminations which resulted from the "lay-off" of employees in the processing area were held not to be a violation of s. 79.

Turning to the termination of employees in the drapery room, the Board stated that, if the employer had scaled-down or even shut down that part of the operation, it would not have been a violation since such a response was reasonably to be expected, in that the drapery room was losing money. However, the introduction of new means of responding to the economic difficulties as the employer has done, i.e. to close the section and contract out that work, was outside such reasonable expectations. Unless there is a practice of contracting out, the employer's "right" to contract out is limited by the employees' "privilege" of performing work if the work is being done for the employer's benefit. An employee would not reasonably expect that the work would continue to be performed for the benefit of the employer's operation but through contracting out. Therefore, the Board concluded that the termination of the drapery room employees was in contravention of the freeze provision of the Act. *Simpsons Limited*, [1985] OLRB Rep. April 594.

Oral evidence not permitted to establish union membership

The Board dealt with an application for certification in which an employee association also sought certification by way of intervention. The intervener's evidence of membership consisted of signed receipts indicating that a dollar was paid. The receipts did not indicate the purpose of the payment nor were they accompanied by any applications for membership. In these circumstances,

the intervener sought to adduce oral evidence in order to establish that applications for membership were in fact received at the time the dollar amounts were paid.

The Board stated that when the definition of the term “member” in s. 1(1)(i) of the Act is read together with ss. (1) and (2) of s. 73 of the Rules of Procedure, the Board must have written evidence of two acts by persons who are claimed to be members of a union. First, the Board must have written evidence that the persons have applied to become members of the union. Second, it must have written evidence that each person has paid at least one dollar on his own behalf in respect of initiation fees or monthly dues of the union. In the case at hand, all that was before the Board was written evidence that the persons had paid a dollar each for something. Therefore, even if the receipts stated that the payment was made as union dues, the Board still would be left without written evidence that the persons who paid the amounts also applied for membership. The Board noted that while oral evidence may be permitted to substantiate or identify ambiguous documentary evidence, such evidence is not permissible for the purpose of establishing the fact of membership. *Colautti Construction Ltd.*, [1985] OLRB Rep. May 643.

Employer relying on provincial inflation restraint guidelines must provide information on existing benefit expenses

The complainant union submitted a proposal for renewing its collective agreement with the employer and requested basic costing information from the employer. The employer refused the information sought and indicated its preference to follow the settlement of the “host hospital”, or to settle at a total compensation package of 5% in accordance with the “provincial guidelines” under the *Public Sector Prices and Compensation Review Act, 1983*. After several further attempts failed, the union made a formal written request for information including (a) a list of bargaining unit employees setting out rate of pay, classification, employment status and total service credit for each employee and (b) the employer’s benefit expenses for each benefit provided to employees, including OHIP, insurance, drug plan, dental plan, etc. This request was also repeatedly refused by the employer. The union complained that the employer’s position constituted a contravention of the duty to bargain in good faith.

The Board reviewed its own jurisprudence and noted that it is well established that the employer’s duty under s. 15 includes an obligation to comply with the union’s request for information concerning matters such as existing wage rates and classification, and that such duty is not restricted to first agreement negotiations. This flows from one of the principal functions of the duty in s. 15, namely, to foster rational, informed discussion. In the circumstances of this case, the Board noted that the union would not be in a position to meaningfully appraise the respondent’s proposal without the information requested in its letter. This was so because the 5% increase envisioned by the provincial guidelines is calculated on the basis of “total compensation including salaries, wages, benefits and perquisites”. Therefore, in the circumstances, the Board concluded that the employer’s refusal was in contravention of s. 15. However, in directing the employer to provide information, the Board restricted its order to that information sought from the employer prior to the filing of the complaint. The additional information sought at the hearing, which had not been previously requested from the employer, was not included. *Ontario Cancer Treatment and Research Foundation (Thunder Bay Clinic) and CUPE and its local 3020*, [1985] OLRB Rep. May 705.

Occasional teachers’ certification application

The Ontario Secondary School Teachers Federation applied for certification by way of a pre-hearing vote with respect to a bargaining unit of occasional teachers employed by the Board of Education for the City of York. Two issues arose. Firstly, did the OSSTF, which had school princi-

pals, vice-principals and department heads as its members, have status as a trade union within the meaning of the *Labour Relations Act*? Secondly, given the unusual circumstances of employment of occasional teachers, was the Board's usual 30/30 rule appropriate to determine the composition of the bargaining unit?

On the former issue, the Board concluded that school principals, vice-principals and department heads exercise managerial functions within the meaning of section 1(3)(b) of the Act and were therefore not "employees" for the purposes of the Act. Nevertheless, the Board noted that the Act does not expressly require that a trade union be composed exclusively of employees, and that the fact that OSSTF had non-employees in its membership did not deprive it of status under the Act as a trade union. The Board cautioned however, that this was not a retreat from the Board's often-stated concern about company dominated unions. Should members of OSSTF acting on behalf of the employer seek to influence the employee wishes as to union representation, sections 13, 48, 64 and 68 provide ample protection.

On the second issue, the Board and both parties were agreed that the usual 30/30 test was not appropriate for this particular situation in that every employee in the bargaining unit was a "casual" employee. The Board rejected the different alternate tests proposed by the parties and devised a test to suit the particular circumstances of occasional teachers. In addition to those at work on the application date, the unit was to include all occasional teachers who were on the actively interested list who have worked any time during the period of 12 months preceding the application. Further, in order to facilitate an exchange of views and a meaningful vote within the employees who were dispersed all over, the Board directed that the names and addresses of eligible voters should be made available to all parties to the application. *Board of Education for the City of York*, [1985] OLRB Rep. May 767.

Extent of a union's right to organize on private property

The Board received a complaint alleging that the employer, T. Eaton Co. Limited, and the owners of the Eaton Centre shopping mall had violated the *Labour Relations Act* by denying union organizers access to the shopping mall for purposes of union activity. Cadillac Fairview Corporation, the owner of this mall, was named as a respondent, and it was submitted that it acted on behalf of the employer, Eaton's. It was claimed that employees who supported the union were prevented from distributing union literature in the sales areas before store opening, that canvassing or campaigning in Eaton's restaurants was prohibited, and that employees were prevented from engaging in union activity in mall areas prior to store opening when the public was not in the vicinity. Cadillac Fairview relied on the *Trespass to Property Act* for the legality of its conduct.

In its decision, the Board concluded that what it was required to do was to strike a balance between the competing interests, namely the union's right to organize and private property rights of the respondents. Dealing with the respondent Cadillac Fairview, the Board recognized the broad no-solicitation policy followed by Cadillac but stated that the non-discriminatory enforcement of such a policy cannot be a defence by itself to a charge that the employee's statutory rights have been interfered with. The existence of a defence must rest on the risk of actual interference with its commercial interests in the mall.

On the facts, the Board found that Cadillac did not have a business justification of its own for prohibiting union organizers, prior to store opening, from standing outside the Eaton's doors at the "two below" level (an area otherwise open to the public) for purposes of handing out union literature to the employees. At this time there could not be any interference with members of the public, as no members of the public were present. The prohibition was not imposed by Cadillac to protect any business interest of its own, but on behalf of its prime tenant at the mall, Eaton's. In

the absence of such business justification, the Board found Cadillac to have interfered with the union's rights contrary to Section 64.

Turning to the allegations against Eaton's relating to the right to solicit in the Eaton's restaurants and to drop off literature at sales desks within the store prior to store opening, the Board noted the other avenues of communication with employees available to the union, including access to the mall areas provided by this decision. In the circumstances, the Board concluded that solicitation in these areas should be permitted only on a limited basis, in order to accommodate the legitimate business concerns of Eaton's. The Board stated that occasional literature drop-offs before store opening should be permitted provided that the employer has a right to require that all such material be removed from the sales floor prior to store opening. The Board found that the imposition by Eaton's of a blanket no-distribution rule with respect to its premises, even when the store is not open and employees are not working, constituted a contravention of Sections 64 and 66. Directions were issued against Cadillac and Eaton's in accordance with the Board's finding above and Eaton's was directed to circulate to all its employees at the Eaton Centre store an employee notice, which appeared as an appendix to the decision. *T. Eaton Company Limited, Cadillac Fairview Corp. Limited and T.E.C. Leaseholds Limited, re Retail, Wholesale and Department Store Union*, [1985] OLRB Rep. June 941.

Restrictions on picketing in Act not contrary to Charter

The applicant under Sections 92 and 135, was a sub-contractor, whose employees were members of the Boilermakers' Union, Local 128. It contracted to perform certain work at a Domtar Mill using its own employees. The Ironworkers' Union, Local 759, claimed that some of this work should be done by its own members, even though it had no collective bargaining relationship or collective agreement with the applicant. When its demand was not complied with, what was referred to as an "informational" picket line was set up. Although the members of the Boilermakers' Union crossed the picket line, a crane operator, who was a member of the Operating Engineers' Union, who had been engaged by the applicant, honoured the line and had to be replaced by another employee.

The evidence was that the union official who was responsible for the setting up of a picket line questioned the efficacy of the procedure under the Act for resolving jurisdictional disputes and preferred to use his own methods. The respondents claimed that the picket line was only "informational" and that any restriction on such picketing in Sections 74 or 76 was inconsistent with the freedom of expression protected by Section 2(d) of the Charter.

The Board rejected the Charter argument. The Board noted that the mere presence of a picket line at a construction site achieves much more than communication of information. It will likely induce sympathetic action, quite irrespective of the nature of the dispute or the information disseminated. The fact that no strike had yet occurred in this case does not diminish the fact that causing a work stoppage is the purpose of the picketing. If the Charter is applicable between private parties, the Board was called upon to balance the freedom of expression of the union and freedom from forms of economic pressure or coercion contrary to the *Labour Relations Act*, which is enjoyed by the applicant and the other contractors on the site. Assuming that picketing involves an element of freedom of expression the Board did not think that the Charter protected expressions which, as here, amounted to a call or encouragement to engage in an unlawful strike. The Board concluded that to the extent that Sections 74 and 76 impose restrictions on such picketing, these were quite justifiable in accordance with the terms of the Charter. Declarations of contravention of the Act and directions to cease and desist were accordingly issued against the union and the respondent union official. *Horton CBI Limited*, [1985] OLRB Rep. June 880.

Employer's refusal to sign a collective agreement embodying the terms of an earlier extinguished offer not unlawful

The parties were in negotiations for renewal of their collective agreement. The bargaining unit employees rejected the employer's "settlement offer" on May 5, 1984 and commenced a lawful strike on May 7, 1984. On October 25, 1984, the union altered its position and presented the employer with a letter by which it purported to accept the offer which had been rejected five and a half months earlier. That letter further advised the employer that all of the strikers were prepared to return to work pursuant to Section 73 of the Act. It was the union's position that there was a collective agreement in place from the moment of delivery of that letter to the employer. However, the employer took the position that no collective agreement had been reached. When the employer's representatives asked the union representatives if there was any point in trying to negotiate the term of the collective agreement and return to work matters, they replied in the negative. The employer then advised the union of certain operational changes that had been made during the strike, and of five discharges and two suspensions that had been imposed earlier that day for strike related misconduct.

In a decision dealing (at the request of the union) with only the bargaining aspect of the union's complaint under Section 89 of the Act, the Board held that the employer's "settlement offer" had been extinguished by the passage of time and by the intervening event of the strike, long before its purported acceptance by the union on October 25, 1984. The Board also held that the employer's refusal to enter into a collective agreement on the basis of that extinguished offer was not unlawful in the circumstances of the case, in that new issues and considerations had become relevant since the time of that offer. With respect to the timing of the discharges and suspensions, the Board was satisfied on the totality of the evidence that they were effectuated on October 25, 1984 in a lawful attempt to make them inarbitrable under the collective agreement which the employer anticipated would be entered into that day or shortly thereafter, and not in an unlawful attempt to avoid entering into a collective agreement.

The complaint as it pertained to the bargaining aspect was dismissed. The Registrar was directed to schedule further hearings to deal with the other aspects of the complaint. *Radio Shack*, [1985] OLRB Rep. June 901.

Interviews about union with individual employees held unlawful even though no threats made

The union in this case applied for certification and relied on employer unlawful conduct to request that it be certified without a vote pursuant to s. 8 of the Act. The alleged unlawful employer conduct stemmed from a series of one-on-one meetings members of management had with employees. Although there were discrepancies in the evidence as to the content of the conversations at these meetings, the Board concluded that management had not made any threats or used unlawful coercion as would constitute contraventions of ss. 60 or 70 of the Act.

However, the Board expressed concern about the very fact of the employer engaging in one-on-one discussions with employees about the union, during which the employer is likely to ascertain whether they were union supporters. The Board stated that these one-on-one meetings, during which the employer indicated its opposition to the union, likely had a greater impact on employees than if they had been addressed as part of a larger group or if they had read management's views in a printed letter. Adopting the reasoning in a decision of the U.S. National Labor Relations Board, the Board concluded that the employer conduct went beyond the freedom of expression in s. 64 and constituted an unlawful interference with the employees' right to select a trade union.

The Board then had to decide whether the contravention of s. 64 was likely to result in a situation where the true wishes of the employees were not likely to be ascertained and if so, whether the Board should exercise its discretion to certify the union under s. 8, notwithstanding that only about 33% of the unit employees had become members of the union. Considering the nature of the employer's unlawful conduct and the fact that the union had not attempted to continue its organizing efforts, the Board concluded that this was not an appropriate case to certify pursuant to the extraordinary provision of s. 8. *J. Pascal Inc.*, [1985] OLRB Rep. July 1075.

Danger posed by required physical motion covered by term “workplace” in work refusal provision

In the course of dealing with a complaint under s. 24 of the *Occupational Health and Safety Act*, the Board had to determine the extent of the application of the workers' right to refuse unsafe work. The crux of the complaint was that the complainant refused to throw a heavy tread (used in light truck tires) onto a platform, because he already experienced a sore back and shoulders from doing it and feared that continuing the motion required to perform the job might injure him.

The employer's perception of the situation was that this did not involve a safety matter at all. That is, people are assigned to work on the machines and if they are physically not capable of performing such work, then that is not a safety matter and by applying the rules of the workplace the employer is not discriminating against anyone for exercising a right under the Act.

The Board noted that it had held in *Wheeler Metal Products* that “section 23 was intended to provide a remedy for workers in danger, not for those who are physically unsuited to a job, which upon reasonable evaluation presented no problems to other workers”. However, the Board distinguished the facts before it from the worker suffering from asthma in *Wheeler*. Here, the complainant was not saying that he is too short or too weak to throw the tread. The complaint is specifically about the physical motion required. Noting that the Board has given the term “workplace” in s. 23 a broad meaning, the Board concluded that this situation, which involves the relationship of the worker to the machine, is covered by the term workplace.

The Board went on to hold that it was this safety concern that caused the complainant to refuse to work and that therefore he was acting within his rights under section 23. The Board recognized that the employer, by sending the complainant home, did not intend to discipline him for exercising a right under the Act, but was merely applying its regular policy with respect to all employees who are assigned specific tasks. Nevertheless the Board held that once it is found that the employee was acting within his rights under s. 23, it is no defence to a complaint under s. 24 that the employer had no intention to discriminate. The employer was found to have contravened s. 24 and was directed to pay two days compensation to the complainant. *Firestone Canada Inc. re Kevin Lunn*, [1985] OLRB Rep. July 1044.

Exemptions from union dues based on religious beliefs

The Board dealt with two applications from employees seeking exemption from the requirement of paying union dues in their collective agreement. A common ground relied on in both applications was OPSEU's position on the abortion issue. While both applicants recognized the freedom of speech and expression, on the issue, of their fellow union members, they objected to the expenditure of funds for the pro-abortion cause, which was directly in conflict with their religious beliefs. Since the union was able to establish that no funds had in fact been spent to support the pro-abortion stand, the Board, following the *Georgian College, re Tremblay* decision, held that the applications, to the extent that they relied on that ground, were premature.

However, there were alternate grounds relied on for each of the applications. Mrs. Geyer was an active member of the Pentecostal Tabernacle Church. She believed that the teachings of the church are in conflict with the practices and principles of OPSEU because she felt she could not honour her employer as required by the bible and also participate in or condone strike action. She also found conflict in that the OPSEU constitution and its initiation oath made no mention of God. Mrs. Hall was an active member of the Calvary Gospel Church. Apart from the union's pro-abortion stand, Mrs. Hall's application was based on the ground that the right to strike, which was defended by the OPSEU constitution, was in conflict with the teachings of her faith.

In its decision, the Board noted that it was satisfied with, and the union had not contested, the sincerity of the applicants' beliefs. As for Mrs. Geyer, she sincerely believed that the OPSEU constitution, by supporting strikes and requiring an oath which made no reference to God, contradicts the bible. The Board stated that it did not sit in judgement on the reasonableness of Mrs. Geyer's beliefs, but was satisfied that these sincere and religious beliefs were the cause of her objection to supporting the union. Therefore, her application for exemption under s. 47 was granted.

Mrs. Hall had become a member of OPSEU and it took her seven months to resign and make the application for exemption. While expressing some concern, the Board was satisfied with her explanation that it took her time to resolve the internal struggle that she suffered while she was trying to reconcile the scriptures with the concept of the union. Being an intelligent woman, she methodically sought out information from OPSEU and the OFL, before finally coming to the conclusion that her view of Christianity was inconsistent with the aims of the union as it related to strike action. The Board stated that applicants under s. 47 are entitled to change their minds or positions, provided the Board could be satisfied of their sincerity, as it was here. Although Mrs. Hall's concerns about the union's administration may also have motivated her to make the application, there was no requirement that religious objection be the sole ground for objection. The Board was convinced that Mrs. Hall's religious objection to OPSEU's defence of the right to strike was a primary reason for application. Her application was granted on this basis. *Mary Geyer and Barbara Hall re OPSEU*, [1985] OLRB Rep. July 1057.

Board's powers in applying Charter

O.P.S.E.U. filed an application for certification in which it sought to represent a group of part-time employees of the respondent community college. The college contended that it was a "crown agency" and as such, was not covered by the *Labour Relations Act*. The applicant argued that even if the college was a crown agency, any impediment to the Board's jurisdiction to proceed with the application was removed by the adoption, in 1981, of the *Canadian Charter of Rights and Freedoms*.

The Board reviewed prior Board decisions which had held that community colleges were crown agencies, and legislative changes that had taken place since those decisions. It concluded that the legislative changes did not dictate a different result today. The Board held that, subject to its determination on the Charter issues, the *Labour Relations Act* did not apply to employees of a community college.

The union's argument based on the Charter was two-fold. First, it pointed out that part-time employees of Community Colleges are excluded from both the *Crown Employees Collective Bargaining Act* and the *Colleges Collective Bargaining Act*. Therefore, the union submitted, to also exclude these employees from the *Labour Relations Act*, by interpreting that Act subject to s. 11 of the *Interpretations Act*, would be to leave them without any legislative protection or mechanism for collective bargaining. In the union's submission such a result seriously interfered with the

employees' freedom of association guaranteed by the Charter. The union urged the Board to apply s. 2(d) of the Charter to "read down" or ignore s. 11 of the *Interpretations Act*, so as to enable the Board to apply the *Labour Relations Act* to these employees.

The Board, without determining the extent or meaning of the freedom of association in the Charter and assuming that the absence of collective bargaining legislation infringes upon that freedom, proceeded to deal with the union's submissions. The Board recognized that it is entitled to consider the Charter as an aid to interpreting the *Labour Relations Act* or even to decide that a provision of that Act is inconsistent with the Charter. On the other hand, while the Board may be required to construe external statutes in carrying out its responsibilities under the *Labour Relations Act*, the Board was of the opinion that it had no jurisdiction to apply the Charter to an external statute, to "read down" any of its provisions and thereby to extend its own jurisdiction. The Board concluded that it had no jurisdiction to "read down" the *Interpretations Act* by applying provisions of the Charter, and that that was a function appropriate for a superior court. The Board observed in passing that in the circumstances of the case before it, if anything is to be struck down as contrary to the Charter, it is not the provision of the *Interpretations Act* but the exclusion of part-time employees from coverage in the *Colleges Collective Bargaining Act*.

The Board also rejected the union's second argument based on the equality provision in s. 15 of the Charter. The section had come into effect after the hearing but before the release of the decision. The Board disposed of this submission on the ground that s. 15 was not intended to operate retrospectively, but went on to observe that even if s. 15 did apply to the situation, the result would only lead to a finding that the provision in the *Colleges Collective Bargaining Act* excluding part-time employees was inoperative, not that they should fall under the *Labour Relations Act*.

In the result, the Board held that it had no jurisdiction to entertain the application and that if the employees had any remedy at all, it is one which must be sought in the courts or from the legislature. *Sault College of Applied Arts and Technology*, [1985] OLRB Rep. Aug. 1293.

Union conduct in signing collective agreement without conducting ratification vote as per usual practice held not to be unlawful

The Board issued its decision in a complaint in which several Eaton's employees alleged that the Retail, Wholesale and Department Store Union had acted unlawfully in signing a collective agreement on the basis of a ratification by its International President, without conducting a ratification vote among the employees, as per usual practice of the union. The employer supported the complainants' position.

The evidence indicated that the union decided not to follow its usual practice because of the concern that non-striking employees and strike replacements might vote down a proposed collective agreement and put the union in a situation where it had no collective agreement and no real chance of getting one. There was also the concern that if no collective agreement was signed within six months of the commencement of the strike, striking employees might lose their jobs and the union's bargaining rights might be terminated through an application initiated by non-striking employees.

The Board noted that the *Labour Relations Act* does not require ratification votes. Examining the provisions of the union's constitution, the Board concluded that under it, the International President did have authority to ratify the collective agreement and to thereby end the strike. While the union had made indications that ratification votes would be held, these were made in good faith. The reasons adduced by the union for its subsequent decision not to hold ratifi-

cation votes were reasonable considering that this was an unusual situation. The Board concluded that it did not demonstrate bad faith.

The Board also rejected the argument that the union's refusal to permit non-strikers to participate in return to work meetings demonstrated union hostility and ill-will towards them. Given that the purpose of the meetings was to ascertain the wishes of the strikers, the Board found that the union's decision was not indicative of any ill-will.

The Board held that the return to work vote conducted by the union was not a ratification vote within the meaning of section 72. Nor was it a strike vote within the meaning of that section. The Board concluded that a strike vote only included a vote authorizing a future strike but not a vote as to the wishes of employees already on strike to return to vote. To hold otherwise would be to permit non-striking employees to decide whether or not striking employees should end their strike.

Finally, the Board rejected the aspect of the complaint which alleged that the union's ratification and signing of the collective agreement was designed to discriminate or punish non-striking employees contrary to section 80(2) because of the possibility that they might file a termination application. Citing prior Board case law, the Board concluded that it was not unlawful for the union to seek to order its affairs so as to take full advantage of the provisions of the Act relating to timeliness of termination applications. In the result, the complaint was dismissed in its totality. *T. Eaton Company Limited, Re Retail, Wholesale and Department Store Union, Re Group of Employees*, [1985] OLRB Rep. Aug. 1309.

Union member entitled under s. 46(2) to protection from personal vendetta by union

The complainant and the union were involved in proceedings before the Board. At a time when these proceedings were still ongoing, a heated exchange occurred at the workplace between the complainant and the union's Business Manager Ronald Last, during which the complainant, who was the foreman on duty, ordered Last, who had gone into the shop on some union business, to get out.

Last filed a grievance and Egan received a warning not to have any further confrontation with Last. In addition, Last laid charges against Egan under the constitution. While the Trial Board hearing was pending, a further similar confrontation occurred for which Egan was suspended for 3 days. Egan did not attend the hearing before the Trial Board but sent a letter to be read at the hearing. In the meantime, a second charge was laid by Last based on the second confrontation. Egan sent a plea of not guilty but did not attend this hearing either. The first Trial Board found Egan guilty and fined him \$1,000.00 and required him to post a further bond for \$1,000.00. The second Trial Board fined him \$2,250.00, banned him from membership or having any voice or vote for a period of 5 years. Both Trial Boards included a brother of the accuser, Ronald Last. When Egan refused to pay, the union grieved demanding that Egan be dismissed. Egan's complaint claimed that he was protected under s. 46(2)(g) since the fines were "unreasonable assessments".

The Board rejected the union's argument that the term "other assessments" does not cover fines. The Board held that the section is broad enough to include fines. The Board also rejected the argument that the Board's jurisdiction in adjudicating the reasonableness of the assessment relates to the quantum of fine. The Board stated that while the size of the fine may be a major factor that will be taken into account in determining reasonableness, it is not solely determinative.

The Board concluded that an unreasonable process which leads to imposition of a fine may also lead to a finding of unreasonableness. On the evidence, the Board held that the conduct of Last and the two Trial Boards constituted "a blatant attempt to get rid of Egan". The Board stated

that Last's interpretation of the collective agreement (which the Board stated could best be regarded as silly) and the allegation that Egan's conduct towards Last brought "the stature of the whole brotherhood" into disrepute, lent a sense of unreality to the charges laid against Egan. That these charges should result in substantial fines led the Board to the conclusion that the purpose of the charges was to drive Egan out of the union and consequently from his job. This is precisely what s. 46(2)(g) speaks to and the Board held that Egan was entitled to protection from such conduct.

While the Board noted that it may be that Egan had brought about his own misfortunes, it emphasized that there is no room for union officials to carry out a personal vendetta against a member, as Last had done in this case. The Board held that the fines, which Egan refused to pay, were unreasonable assessments within the meaning of s. 46(2)(g) and directed the union to cease and desist from requiring the employer to discharge Egan on account of his loss of union membership. *William Egan, Re Painters, Local 1590*, [1985] OLRB Rep. Aug. 1192.

Full-time employee filing termination application with respect to full and part-time units

The Board received an application for termination of bargaining rights in which the only named applicant was a full-time employee. The application sought a declaration of termination with respect to both the full and part-time bargaining units represented by the respondent union. The union submitted that the named applicant was not "an employee in the bargaining unit" within the meaning of s. 57 of the Act, as far as the application related to the part-time unit, and subsequently that aspect of the application should be dismissed.

The Board disagreed. It noted that the individual applicant was only the nominal applicant. The petition, which accompanied the application was signed by both full-time and part-time employees. All these signatories were applicants and therefore the application had in fact been made by employees in both units. *Economy Fair*, [1985] OLRB Rep. Sept. 1357.

Board officers empowered to use force to effect posting of notices ordered by Board; no reasonable apprehension Board is biased where officers use such force

The respondent employers had refused to comply with Board directions to post standard notices to their employees of the hearing of certification and related employer applications filed with the Board. The respondents' managers had then resisted attempts by a Board officer to post the required notices. Ultimately, a Board officer attended at the respondents' premises accompanied by a sheriff's officer, who ensured that the posting was accomplished unhindered by making it clear that anyone who interfered with the Board officer would be arrested.

The respondents argued that the Board officer had no authority to enter premises forcibly with the assistance of a sheriff's officer in order to post notices. This, it said, made the Board appear as the ally of the trade union, creating a reasonable apprehension of bias which deprived the Board, and every potential quorum of it, of jurisdiction to entertain the applications.

The respondents also argued that even if the Board had such power, it could use it only to post notices authorized by the Regulations. The respondent argued that all information included in the certification application itself should have been reproduced in paragraph 2 of Form 6 after the words "your attention is directed to the following information contained in the application" and, as it had not, the notice was not one authorized by the Regulations.

The respondent also argued that the allegations of wrongdoing set out in the union's certification application and section 89 complaint were so detailed and inflammatory as to raise a reasonable apprehension that any panel that read them would be biased.

Although the respondent sought consent under section 109 of the Act to subpoena several Board officers and employees, the Board withheld consideration of that request until the respondent led its own evidence about the matters concerning which the testimony of Board officers was sought. The Board will not ordinarily grant its consent under section 109 until the applicant has exhausted other means to adduce the evidence. This protects the impartiality of Board officers and employees.

The Board rejected the bias argument. The Board is required under the *Statutory Powers Procedure Act* to give notice of its hearings to those whose rights might be affected. The best method of giving notice to employees is by a posting at their workplace, as set out in the Board's Rule 77(1), authorized by sections 103(2)(d) and (g) of the Act. If the power to post could be exercised only with the occupant's consent, the power would be meaningless. Having regard to the language and statutory history of the pertinent provisions of the *Labour Relations Act*, section 27 of the *Interpretation Act* and relevant jurisprudence, the Board concluded that the *Labour Relations Act* empowered it to post notices in a workplace despite the occupant's opposition and to use reasonable force in so doing. It also concluded that no reasonable apprehension of bias could arise from the Board's having exercised such powers in the discharge of its obligation to give notice to employees.

With respect to the form of the notices, the Board concluded that there was no general requirement that all, or any, information from the certification application be inserted in paragraph 2 of Form 6, which would be completed with additional information only in the rare case the Board found it necessary or desirable to do so. The Board also observed that the power to post notices was not limited to those notices prescribed by Regulation, and that it had the power to modify prescribed forms when it considered that necessary or desirable.

The Board's rules, the rules of natural justice, and the provisions of the *Statutory Powers Procedure Act*, all require that a complainant file with the Board full particulars of the allegations of wrongdoing on which it relies, so that notice thereof can be given to the parties against whom they are made. The Board is fully able to distinguish between allegations and evidence, and no reasonable apprehension of bias could arise from the fact that the Board knows at the outset of its hearing what allegations will have to be dealt with therein. *Plaza Fibreglas Manufacturing Limited*, [1985] OLRB Rep. Oct. 1503.

Workers on a subsequent shift not "bound" by Health & Safety Inspector's report. Knowledge of report goes to reasonableness of subsequent refusal to work.

The union complained that thirty employees had been wrongfully disciplined for invoking section 23 of the *Occupational Health and Safety Act* in that employees were given a written warning for a refusal to work; the union submitted the assembly line was unsafe.

During the first shift on Thursday, the line had "jumped", causing one worker a minor injury. Maintenance work was completed in time for the second shift. Employees on this shift observed a slow pulsating motion and refused to work. An inspector from the Ministry found the line "not likely to endanger" the workers; and the line ran for the balance of the shift. The following day, the first shift refused to work. Management and union representatives discussed the events of the previous day with the workers. The refusal continued. A management representative told the employees that a major overhaul would cause a two-month shutdown, and that, if further stoppages occurred, units might have to be imported from other American plants. Employees were warned that their refusal could constitute an "illegal strike". An inspector was again called who found the line not to be unsafe. The employer subsequently took the disciplinary action in question.

The union argued that the refusal to work was reasonable under the circumstances and protected by the Act. It argued that employees were not bound by the inspector's assessment given during the previous shift and were entitled to a separate assessment. The union also argued that employer comments with respect to an illegal strike, warnings of an extended shutdown and importation of units from other plants, and the disciplinary letter, were reprisals for the work refusal contrary to section 24 of the Act.

The Board noted that there is nothing of itself improper in a refusal by a group of employees rather than a refusal on an individual basis and that an employee need not be correct in his or her assessment provided that there were reasonable grounds, objectively measured, for the refusal. However, after discussions with union and management representatives on the second day, a continued refusal was not justified. While the employees were not "bound" by the first report of the inspector, the fact that they came to know of it during the discussions was a factor in assessing the reasonableness of their continued refusal. The line had been manned without incident for several hours on the second shift following the first inspector's assessment. There was no evidence that the line had "jumped" again. Given that the union wanted a complete overhaul of the line, the company's statement about an intended shutdown did not amount to intimidation or coercion contrary to section 24(1) of the Act. The statement about an illegal strike was merely a statement of company position regarding the refusal and not in violation of the Act. The Board observed that, with regard to statements concerning importing units from other plants, "there is a fine line between a statement of fact and a threat regarding alternatives open to the company in response to a work refusal." In the circumstances, the Board concluded the statement was not a violation of the Act.

Having found no reasonable grounds for the work refusal, the Board then considered the severity of discipline imposed. It found the written reprimand to be a mild form of discipline with which it would not interfere. Accordingly, the complaint was dismissed. *Camco Inc.*, [1985] OLRB Rep. Oct. 1431.

Board may state case of contempt to Divisional Court on ex parte application of a party; no hearing or other involvement of respondent necessary

The applicant union asked the Board to state a case for contempt against the respondent employer to Divisional Court under s. 13 of the *Statutory Powers Procedure Act*. That section provides that "the tribunal may, of its own motion or an application of a party to proceedings, state a case to the Divisional Court setting out the facts". The request arose after the respondent employer repeatedly failed to follow Board directions to post notices of hearing regarding proceedings pending before the Board, or to comply with a Board order to file employee lists and specimen signatures.

The Board considered the nature of its function under s. 13. It is the court, not the tribunal, which adjudicates and punishes in such proceedings. A decision by the Board to state a case does not involve a conclusive adjudication of the respondent's rights or the facts upon which its liability may depend. While the respondents have the onus of explaining or contradicting facts alleged in the stated case, they are free to present evidence and argue their case. The Board decided that the nature of its function under s. 13 made it unnecessary to hold a hearing or otherwise involve the respondent in its decision whether or not to state a case.

The Board consented to state a case as requested, and concluded that the factual allegations to be set out in the stated case should include observations made by a Labour Relations Officer in the exercise of duties and powers delegated to him by Board order and recited by him in the report

required by that Board order. *Plaza Fibreglass Manufacturing Limited*, [1985] OLRB Rep. Nov. 1648.

Related employer declaration not available in genuine subcontract. Section 1(4) inapplicable where bargaining stance of employer dictated by economic realities of subcontract

The applicant sought a declaration under s. 1(4) that a development company managing a downtown complex was a related employer to the service company holding the cleaning subcontract and for which the applicant held bargaining rights.

The development company gave the subcontractor a letter for use in bargaining stating that there would not be any increase in the contract price to reflect increased labour costs. The subcontractor also repeatedly told the union during bargaining that its positions were effectively dictated by the development company. It warned that a strike or high labour costs might cause the development company to award the contract to another firm. This was done without the development company's knowledge or consent.

The Board found this situation insufficient to support a related employer declaration. S. 1(4) was not intended to collapse most bona fide subcontracting relationships. The Board's discretion to make such a declaration should be exercised only where there is clear evidence of the mischief the section was intended to avoid; however, a declaration may be appropriate where labour services are contracted in, the subcontractor being so effectively dominated that joint control and direction result, and it appears that the subcontract was introduced to provide a non-union corporate vehicle for the performance of these services.

This was not such a case. The two companies had no common principals, shareholders, financial supporters, logos, solicitors, offices or personnel. Management, including the conduct of labour relations, was separate. Obviously, the subcontractor would have to take into account its competitors and the capacity of its customer to pay; and it may have chosen to adopt a collective bargaining posture emphasizing these themes, but that did not make the development company the "real employer" or warrant the invocation of s. 1(4).

The subcontractor was not a shell or device to avoid collective bargaining, nor an instrument of the development company. Although the development company had considerable leverage of its subcontract, this was the result of normal market conditions. A degree of functional interdependence is implicit in many subcontracting arrangements, but in the absence of other indicia of relatedness, or an erosion of bargaining rights, this would not trigger s. 1(4). The application was dismissed. *Food and Service Workers of Canada and Federated Building Maintenance Company Limited and Olympia & York Development Limited*, [1985] OLRB Rep. Nov. 1585.

Duty to bargain in good faith, scope of bargainable topics and duty to disclose

During the bargaining which took place between the complainant union representing the Royal Conservatory of Music faculty and the respondent, University of Toronto, the respondent's plan to separate the conservatory from the university was a great concern to the union.

It tabled a nine point proposal relating to the separation and made extensive information requests concerning the plan. The respondent viewed the separation as "non-negotiable". It would neither discuss them nor disclose the requested information. When the union complained to the Board that this stance constituted a breach of the duty to bargain in good faith under the Act, the respondent declined to continue any bargaining pending the Board's decision. The union amended its complaint to include this refusal.

The Board affirmed its position in *DeVilbiss* that the duty is based on “voluntarism”. While the Board may monitor the bargaining process, it is not, in the absence of demands which are illegal or designed to thwart bargaining, concerned with its content. Since the parties are free to agree on any matter, there must be a corresponding freedom to table that matter for discussion. The definition of a collective agreement under s. 1(1)(e) of the Act is expansive. Provided the motive is not the avoidance of a collective agreement, the Board will not question the wisdom of the proposals or priorities put forward by the parties. The respondent’s refusal to discuss the nine proposals was a breach of the duty. The Board emphasized that it need not agree with them, but it must respond by stating its position and giving an explanation.

The failure to disclose was not a breach of the duty. Disclosure is necessary where it is essential to rational, informed discussion in the bargaining process. But the duty to disclose is not co-extensive with the duty to bargain: a party may not use its own proposals as a springboard to force the other party to disclose. Apart from the *prima facie* right to information about existing terms and conditions of employment, the disclosure obligation is contingent upon the information being necessary for one party to adequately comprehend the position taken by the other. Where a party’s proposal or response is rationally based, it may be required to prove the *bona fides* of that position through disclosure. Although the respondent’s failure to disclose was not at that point a breach, some of the complainant’s information requests might trigger a disclosure duty depending upon the university’s response to the union’s proposals, as directed by the Board.

The Board found no cogent reason precluding bargaining on outstanding issues pending the Board’s decision. To allow a party to cease bargaining in the face of a complaint is disruptive of negotiations and may reward bad faith. The respondent’s refusal to continue negotiations was held to be a breach of s. 15.

The Board affirmed its position in *Canadian Industries* that the focus of its remedial authority in s. 15 breaches should be on repairing the bargaining relationship. It issued a declaration that the respondent had contravened the duty and directed its compliance. To this end, it ordered the respondent to table within a reasonable time a full package of proposals on all issues, including a response to the complainants’ nine points. *Royal Conservatory of Music Faculty Association and Governing Council of University of Toronto*, [1985] OLRB Rep. Nov. 1652.

Trade union not becoming an employer within meaning of Act’s reverse onus provisions when referring persons to employment pursuant to a collective agreement

In this case, the Board heard a complaint that the respondent union had violated its duty of fair referral set out in Section 69 of the Act. Prior to the hearing, the respondent moved for a ruling that the reverse onus provision of Subsection 89(5) applied to the complainant. The Board, however, in an oral ruling, was not persuaded that a trade union becomes an employer or employers’ organization when it refers persons to employment pursuant to a collective agreement. The reverse onus provision applies only to an employer or employers’ organization, and these terms could not be stretched to fit the respondent without legislative amendment.

In its final decision, the Board referred extensively to its earlier decision in *Joe Portis*, [1983] OLRB Rep. July 1660, in which it pointed out that the union’s discretion in operating a hiring hall must not be used to benefit friends and relatives, nor to punish enemies. The Board found that the complainant had incurred the wrath of the Local’s president and business manager by running against their preferred candidate in local elections. The business manager had told other executive members that his rivals were to be laid off. The Board also found that the Local’s hiring hall records had been altered by the business manager or someone under his direction for the purpose of misleading the Board or anyone else enquiring into the operation of the hiring hall. These alter-

ations caused the Board to discount the evidence of the president's daughter responsible for referrals as this evidence was heavily dependent on the records. Given the expressed willingness of the business manager to penalize political rivals, it was incumbent on the respondent to produce a plausible explanation for what appeared to be anomalous and arbitrary job referrals, and the respondent had failed to produce such an explanation. While Section 69 applies only to situations in which a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment pursuant to a collective agreement, the Section was applicable to the present complaint as the president's daughter had testified that she would not refer members to 'non-union jobs'.

Three of the six referrals challenged by the complainant were found to be in breach of Section 69. The Board accordingly directed the respondent to compensate the complainant for lost wages and benefits as a result of the contravention, taking into account contingencies, including the likelihood that the complainant would have refused one or more of the referrals, or would have been physically unable to perform the work if he had accepted. The complainant's request for costs was refused for the reasons set out in *Silknit Limited*, [1983] OLRB Rep. Nov. 1913, and because his success had been mixed. *Luciano D'Alessandro*, [1985] OLRB Rep. Dec. 1708.

Five minute work stoppage constitutes strike

The applicant company sought an illegal strike declaration, and a cease and desist order from the Board against the union and two of its officers who had helped instigate the first of a planned series of five minute work stoppages. The company had earlier announced the unilateral introduction of a new superclassification, something which had been rejected by the union in negotiations preceding the existing collective agreement. The union responded by invoking the appeal procedure set out in the collective agreement, and seeking expedited arbitration for the policy grievance it filed in the matter. Some of the respondents also filed an unfair labour practice complaint against the company. The union also sought to apply pressure on the employer to drop the superclassification through protest meetings and pamphlets. Ultimately, the union and employees agreed to a series of five-minute work stoppages, the first of which took place before the application.

The union argued that the work stoppage was not a strike within the meaning of the Act as the applicant company had not lost any production as a result. It also argued that the Board should exercise its discretion to deny relief to the applicant. Such a denial would be appropriate, in the opinion of the union, because the company had high handedly imposed a demand it was unable to achieve in bargaining, thus ensuring a hostile response from employees. The union also argued that it had done what was reasonable to contain employee discontent. If the controlled short stoppage had not taken place, a spontaneous wildcat strike of indefinite duration would have occurred. The employer was not before the Board with clean hands, while the union was merely responding as moderately as possible.

The Board rejected the union arguments and issued a cease and desist order. The five minute stoppage constituted a strike within the meaning of Paragraph 1(1)(o) of the Act. The union could not argue that no loss of production had occurred, or should be a factor for the Board's consideration, when the employees in that time period were normally producing goods and services for the applicant company. The Board also noted that the parties had pursued all avenues open to them under the Act and the collective agreement to resolve the dispute in a legal manner. This was an appropriate occasion for the application of the "work now, grieve later" principle, especially as any job loss feared by the union as a result of the company's decision would not occur before the issue had been resolved in a legal manner. Thus, a cease and desist order would preserve the *status*

quo until the real problem could be dealt with. *McDonnell Douglas Canada Ltd.*, [1985] OLRB Rep. Dec. 1750.

Bargaining demand that union withdraw unfair labour practice complaints violates duty to bargain in good faith if pressed to impasse

The union complained that the respondent employer had violated the duty to bargain in good faith on two counts: by demanding that the union withdraw outstanding unfair labour practice complaints relating to the discharge of striking employees, and by tendering, after the union's defeat in a lengthy strike, an offer less generous than its "final settlement offer" made prior to the commencement of the strike.

After a long strike of almost six months duration, the union purported to accept the company's "final offer" made before the strike. In a prior decision, the Board had decided that the offer was no longer open to acceptance, and directed the parties to return to the bargaining table. Much later, the company made an offer much less favourable than the earlier "final settlement offer". It also demanded that the union withdraw unfair labour practice complaints pending before the Board. The union offered to do so if the discharges in question were referred to arbitration. When the employer declined, it complained that the employer had breached its duty to bargain in good faith.

The Board found that the employer's offer, in itself, was "hard"—but not illegal—bargaining. There was nothing unusual in the fact that the employer's bargaining position may have changed between the commencement of the strike and the time of the offer complained of. In a volatile strike situation, the parties' demands may well change in accordance with economic circumstances and their tactical assessment of their own bargaining power. A change in bargaining positions resulting from the change of market conditions and relative bargaining power does not, of itself, constitute a breach of the duty to bargain in good faith. The employer was merely engaging in legal "hard bargaining" based on its superior bargaining power. While the Board may on occasion examine the content of the parties' proposals to determine whether an employer does not really intend to enter into a collective agreement or recognize the union as the exclusive bargaining agent, these factors were not at play in the present case. The company was prepared to enter into a collective agreement, albeit on its own terms. However, the scope of bargaining does not encompass demands which are illegal or inconsistent with the scheme of the *Labour Relations Act*. An employer is not entitled to rely on its superior bargaining power to compel the withdrawal of a complaint before the Board, nor to make the signing of a collective agreement contingent upon such a withdrawal. To do so would be interference with the union's right to represent employees and would penalize other members of the bargaining unit because discharged workers were seeking legal vindication. To hold otherwise would make the employees' statutory rights illusory and subject to the balance of bargaining power rather than the rule of law. Thus, a demand that unfair labour practice complaints be withdrawn would be a breach of the duty to bargain in good faith if pressed to impasse.

However, the Board found no breach of the duty as the union had in fact shown its willingness to bargain over the discharges. The union never objected that the demand was not an improper subject of bargaining nor demanded that it be removed from the table. It had not demanded that the company table a response absent the unfair labour practice complaint issue. If the company had refused to do so, or if its response could be construed as a "penalty" for refusing

to forego statutory rights, the complaint before the Board might have been successful. The Board directed the parties to return to the bargaining table. *Radio Shack*, [1985] OLRB Rep. Dec. 1789.

Contracting in of bargaining unit work found to result in common control or direction with subcontractors

Brantwood Manor Nursing Home had attempted to avoid high labour costs by “contracting in” to two outside agencies work hitherto performed by its unionized employees, who had then been laid off.

The union complained that the contracting in of bargaining unit work was an unfair labour practice and applied under Section 1(4) for a declaration that the employer and two subcontractors were one employer for the purposes of the *Labour Relations Act*.

The Board in its majority decision thoroughly reviewed the events leading up to the subcontracting, and the terms of these contracts. It held that “common control or direction” within the meaning of Section 1(4) can be the result of a contractual relationship even in the absence of any contractual relationship relating to legal ownership.

On the basis of the facts and the legal principles applicable, the Board concluded that Brantwood and the activities of persons provided by the subcontractors were clearly “associated or related activities or businesses”. It also concluded that these activities were under common direction or control, the common element being the contractual arrangements between Brantwood and the two agencies.

Having so found, the Board exercised its discretion to make declarations with respect to each of the two outside agencies, effective to the date each subcontractor engaged persons to perform work at Brantwood. In each case the subcontractor was held to be bound by the terms of Brantwood’s collective agreement with the union. The Board found that the collective agreement had been violated and relied upon its remedial authority under Section 1(4) to direct that Brantwood reinstate workers laid off as a result of the subcontracting, and that these workers be compensated for losses arising from Brantwood’s breach of the collective agreement. The quantum of these damages was left to the parties to settle. *Brantwood Manor Nursing Homes Limited*, [1986] OLRB Rep. Jan. 9.

Compensation to unfairly terminated employees awarded only to date job separation would otherwise have occurred

In this case the termination of four union supporters during an organizing campaign followed shortly after the employer lost two major contracts which would have made layoffs imminent anyway. While the employer was in the United States unsuccessfully attempting to negotiate a contract, two dissatisfied employees contacted a union. A meeting was held and many employees signed union cards. The employer arrived back the next day. He called an employee who had arranged the union meeting into his office. The employer implied he was aware of the union activities and terminated the employee for lack of work. On the same day three other employees who had signed union cards were terminated, while two outspoken union opponents were promoted. On the following day during working hours the employer held a meeting at which he announced the terminations and promotions, promised bonuses if the company’s health improved, and told the employees they had better ‘work more friendly’. Two days later the employer laid off another union supporter. Several other employees were laid off a month later when the order they were working on was completed. At the time of the hearing the company was employing only three employees and was in danger of bankruptcy.

The Board agreed that the first four terminations and the captive meeting were unfair labour practices. A discharge or layoff will constitute an unfair labour practice if motivated in whole or part by anti-union considerations. Here, anti-union motives were apparent notwithstanding the economic condition of the company. Two of the employees terminated the day after the union meeting had been responsible for contacting the union. The first four terminations occurred the day after many had signed union cards. The employer had made no attempt to keep on one of these employees whose skills could have been employed elsewhere. These actions constituted a breach of Sections 64 and 66 of the Act. The captive audience meeting was a forum for thinly veiled threats against union activity which exceeded acceptable limits of employer free speech. This contravened Sections 64 and 70. The subsequent terminations were done for legitimate business reasons and could not be attributed to anti-union motives.

However, the Board was concerned that the remedies available for unfair labour practices be tailored to fit the circumstances of the case. One of the employees had an alternate job offer at the time of his termination and commenced work shortly afterwards. The Board felt it appropriate to award him back pay only to the date he would otherwise have resigned to take the new job. Because layoffs were imminent in any case from the loss of the contracts, two of the terminated employees were ordered compensated only to the latest date they would otherwise have been laid off for business reasons. They were ordered reinstated at such time as work they were qualified to perform was available. The fourth employee had insufficient skills and it was clear he would have been shortly terminated for this reason. The Board ordered compensation to the latest date on which he would have been terminated for his unsatisfactory performance.

The Board further ordered a posting in a conspicuous place in the workplace to remedy the adverse psychological impact of the breaches of the Act. In view of the large number of layoffs, it ordered an employer-paid mailing of a Board notice to all employees as well. To counteract the effect of the captive audience meeting, the union was permitted to hold a one hour meeting with employees during working hours. *K & U Manufacturing Limited*, [1986] OLRB Rep. Jan. 115.

Duty of fair representation applies only within context of bargaining relationship with employer; motive behind complaint irrelevant in assessing duty owed by union

The complainant was a TTC driver who occasionally worked on a 'straight through' crew. Under the contract, specified straight through crews on weekends and holidays were not entitled to breaks. The complainant filed a grievance after his request for a break while on one of these crews was denied by the supervisor.

The union's assistant business agent informed the complainant that the matter did not constitute a valid grievance under the collective agreement, but might be grounds for complaint under the *Employment Standards Act*. At the time the union and employer were in negotiations and straight through crews were an important subject of bargaining. The union decided to keep the grievance timely at Step 3 pending the outcome of negotiations and a review of the collective agreement in the context of the *Employment Standards Act*. The complainant filed daily grievances which were kept timely at Step 3 along with the original.

The complainant pursued the matter, meeting with Employment Standards officials. They told him the company and union had not requested an exemption from the *Employment Standards Act* but had asked about the necessary steps to do so. The complainant was told that the union felt the collective agreement provided a greater benefit than the Act. Employment Standards had also been informed of a vote in the Queensway Division which overwhelmingly favoured existing arrangements. The union felt this vote to be representative.

At a subsequent union meeting, the complainant introduced two motions, one of which would require any union request for an exemption from the *Employment Standards Act* to be placed before the entire membership. In a written response, the union ruled the motions admissible, explaining that the union had attempted to negotiate paid breaks in earlier bargaining, and that the issue would be put to the membership after a decision was received from Employment Standards.

The complainant argued that the union was in breach of its duty of fair representation under Section 68 of the *Labour Relations Act* on four counts: it had negotiated a discriminatory provision in the collective agreement; it had refused to proceed with his grievances to arbitration; it had not properly represented him at the meeting with Employment Standards; and it had ruled against the motion for a referendum.

The Board found no merit in any of these allegations. The different provisions relating to entitlement to breaks were not discriminatory within the meaning of Section 68. Section 68 is aimed against singling out an individual or group for unfair treatment, particularly when the basis for identification of the individual or group is race, colour, creed, etc. But the collective agreement did not single out on the basis of improper criteria. While it did differentiate between some straight through crews and others, such differentiation is characteristic of collective agreements which routinely provide for categories of differentiation. Section 68 is not meant to preclude this.

Nor, under the circumstances, had the union acted improperly by failing to proceed to arbitration. It had kept the grievances timely without prejudice to the complainant while engaging in bargaining and awaiting a decision from Employment Standards. To have proceeded to arbitration before the decision would have required the union to repudiate its long standing bargaining position with negative impact on the bargaining relationship.

Section 68 did not require the union to support the complainant's position before Employment Standards. The duty of fair representation applies only to a trade union within the context of the collective bargaining relationship with the employer. It is not clear that the duty would extend to meetings with Employment Standards. The union was furthermore entitled to take a position supported by the majority of its membership.

There was no obligation on the union to hold a referendum as requested by the complainant. Given its longstanding bargaining position in favour of paid breaks and against split shifts, it was entitled to hold the Queensway vote as representative. The rulings on the complainant's motions were related to the motions and there was no evidence of reasons for them other than those stated by the union.

Throughout the process, the complainant had attempted to put political pressure on the union to back his position. While the union contended that the complainant acted from the improper motive of wishing to embarrass the union executive, this was not of concern to the Board. The motives behind a Section 68 complaint are irrelevant in considering whether the union had breached its duty of fair representation. *James Richard Hughes*, [1986] OLRB Rep. Jan. 103.

Polygraph evidence not admissible

This was an unfair labour practice complaint alleging that the respondent fired an employee for union activities. The respondent wished to introduce polygraph evidence to assist the Board in assessing his credibility.

The Board reviewed current practice in both courts and arbitration boards and noted that in the main such practice opposed admitting polygraph evidence. The Board also noted that the *Employment Standards Act* forbids the requirement by employers of a polygraph test.

The Board remarked on policy objections to admission. Permitting such evidence would create a battle of credibilities which might force employees to provide such evidence although the *Employment Standards Act* indicates the Legislature intended to relieve employees of precisely such pressures. Since non-admission would not restrict the respondent in presenting *viva voce* evidence complete with the protections of cross-examination, the Board decided that the refusal to admit such evidence would not prejudice the respondent's case. The adjudicative process has the means to assess the credibility of witnesses.

Admission of polygraph evidence was thus not necessary and could erode the protection of the *Employment Standards Act*. *Olympia and York Developments Ltd.*, [1986] OLRB Rep. Feb. 270.

Seven branches of trust company held to be unit appropriate for collective bargaining in the circumstances of the particular case

In an application for certification of various Metro Toronto branches of the respondent, National Trust Company, both parties conceded: that a single branch would be an appropriate unit; that terms and conditions of employment are established at the head office and are uniform throughout the various branches involved; that such terms and conditions are implemented at the branch level; that there is a similarity of skills and training involved in people doing similar work across the various branches.

The Board reviewed past jurisprudence on "appropriateness". The question to be asked was: "does the unit which the union seeks to represent encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer?". The Board considered the employer's structure of administration which is hierarchical and noted that it is one factor but not a controlling factor in determining the appropriateness of a bargaining unit in the particular situation. The Board further noted that the seven units the applicant seeks to have considered as one unit cut across two of the respondent's regions but that this did not seem to impose a significant bargaining hardship. The facts indicated that the seven branches had sufficient community of interest to bargain together. The Board also noted that given the employer's structure of administration individual branch bargaining would be unrealistic. Since management itself conceded that all thirty-seven branches would have a sufficient community of interest to constitute a single bargaining unit, the Board held that any subgroup of this would of necessity have sufficient commonality of interest.

Pointing to the preamble to the *Labour Relations Act*, the Board emphasized the legislative predilection for collective bargaining. The jurisprudential movement concerning the appropriate bargaining unit has been in the direction of increasing the options available for organization. Appropriateness should not be considered in the abstract but in terms of the circumstances of the particular case. In the matter at hand, it was not a question of framing a unit to facilitate organization, since the union had successfully organized several branches. The question rather was whether combining those branches into one unit might be more conducive to collective bargaining. The Board determined it would be and certified that unit. *National Trust*, [1986] OLRB Rep. Feb. 250.

Agreement on composition of arbitration board and setting date of hearing constitute election under section 24(2) of the Occupational Health and Safety Act

This was a complaint alleging a violation of Section 24(1) of the *Occupational Health and Safety Act*. The grievor complained that fumes and inadequate ventilation at the water treatment plant of the respondent municipality resulted in a persistent cough and illness severe enough to cause him to miss several days of work. Complaints to his employer brought no change; he therefore discussed the matter with the Health and Safety Branch of the Ministry of Labour and so informed his employer.

He claims that this attempt to exercise his rights was the reason for his transfer and subsequent termination. He filed a grievance seeking reinstatement without loss of benefits, wages or seniority. This grievance proceeded through the prescribed stages. In July of 1985, the union filed notice of intent to arbitrate. The parties agreed upon a three person Board and a hearing was scheduled for June, 1986. This complaint to the Board was filed in November, 1985.

The respondent asserted that there must be an election of forum under Section 24(2), and that by starting the grievance procedure, the complainant had in fact made that election. While counsel for the complainant conceded the requirement of an election under 24(2), he argued that election was only with respect to the *Occupational Health and Safety Act* issue. The arbitration of which the trade union had carriage concerned an improper layoff. The Board could hear a complaint concerning an alleged penalty under the Act. That is to say the election concerned whether or not there was compliance with the Act.

The points at issue were: 1) whether the *Occupational Health and Safety Act* issue was severable from the grievance, permitting the Board to hear the former and the arbitration panel to hear the layoff issue and, 2) if it was not severable, at what point did the election occur.

The Board held that the “matter” referred to in Section 24(2) is the alleged violation of Section 24(1) — penalizing a worker for complying or seeking enforcement of the Act. Thus improper or unjust discipline is precisely such a matter.

With regard to the election, the Board noted that workers should be encouraged to utilize grievance procedures before pursuing statutory ones. The election occurs once the grievor goes beyond the grievance procedure to arbitration. At that point, the trade union which has carriage of the grievance has committed both time and resources. On the other hand, the worker and not the trade union is protected under Section 24(1). The Board did not wish to preclude recourse to the statutory remedy where the trade union decided not to take a matter to arbitration.

However, once the union proceeded to arbitration and made concrete steps in that direction, the election can be held to have taken place. Agreement upon an arbitration panel and setting a date are such concrete steps. The Board therefore dismissed the application. *Municipality of Metropolitan Toronto*, [1986] OLRB Rep. Feb. 283.

Daycare homeworkers held to be dependent contractors

The respondent “Creche” in this certification application was an agency, licensed under the *Day Nurseries Act*, providing day care services on both a group and a private home basis. The application concerned only the latter service.

The applicant union argued that the home workers (“providers”) were employees within the meaning of the *Labour Relations Act*, or in the alternative, dependent contractors within the meaning of Section 1(1)(h). The respondent, to the contrary, asserted that the providers were independent contractors.

The Board found that the respondent was responsible for assuring compliance with minimum standards of the *Day Nurseries Act*. Lengthy assessment preceded selection of a provider. Ongoing supervision through home visits and required orientation and refresher courses maintained those minimum standards. The relationship between the Creche and the provider is governed by a standard form agreement containing undertakings required by the *Day Nurseries Act*, the number of children the provider will accept and the hours of care that will be given. Although the Creche does not guarantee the number of placements and requires providers to have an alternate source of income, the Creche pays providers and supervises them closely. The Creche can terminate placements with a provider and its agreement with the provider at any time. It is recognized that this is an infrequent occurrence, but remains a possibility.

There are no standard hours of care, but the fee schedule set by Metro for a full day of care is based on ten hours. The days and hours which a provider gives care is decided between the provider and the parents. The Board decided that it was more appropriate to examine the status of providers under the definition of dependent contractors. It applied the two tests in *Abdo Contracting*, [1981] OLRB Rep. Nov. 1587. Both tests must be established before a person can be found to be a dependent contractor: 1) a contractor must be in a position of economic dependency on the client closely analogous to that of an individual employee; and, 2) the contractor must be under an obligation to perform duties for the client roughly analogous to the obligation an individual employee has to perform duties for his employer.

In considering the facts, the Board found that the majority of providers are economically dependent upon the Creche. The Creche controls the source of referrals, and restricts the number of children who can be cared for. This limitation restricts earnings from any other source. Providers take no risk in collecting fees. The Creche takes the only entrepreneurial risk — the collection of fees. Thus, providers meet the test of being directly and substantially dependent.

With regard to the second test, the Board recognized that providers have some latitude in meeting their obligations. They can refuse children or may terminate a placement. The Board however, noted Creche control behind this, since the Creche requires a willingness to provide care as a basis for retaining the provider on its roster for referral.

The Board also recognized that providers have some characteristics of entrepreneurship: they can arrange their own time off; can refuse work; can limit their hours of work; and bear the costs of liability insurance.

The fact that the demands of the *Day Nurseries Act* and the Creche's contract with Metro impose the need for most of the control which the Creche exercises over the providers does not alter the fact of their economic dependence. Moreover, they provide only their homes and their labour. Customers and a standard operating manual are provided by the Creche. Taken in conjunction with the Creche's training requirements and performance supervision, the Board found that the providers did have an obligation to perform duties for the Creche analogous to those of employees. In the Board's view the facts pointed to a relationship more closely resembling an employer/employee relationship than one of client and independent contractor. *Cradleship Creche*, [1985] OLRB Rep. Feb. 225.

Sale of a moribund operation without inventory, employees or customers not a sale of a business; section 63 not applicable

Canada Safeway sold twenty-two of its operating stores in southern Ontario to the Oshawa Group, which agreed to honour existing bargaining rights. On the same day, it concluded an agreement to sell the Oshawa Group three “dark” stores which had been closed the previous year. Employees at these dark stores had already exercised seniority rights to transfer to other Safeway operations. After extensive renovations these stores were reopened by the purchaser and staffed by employees from its other stores or hired through Canada Manpower. The applicant union argued that a single sale of business had taken place and asked for a Section 63 declaration which would bind the purchaser to existing bargaining rights at the dark stores.

The Board found that no sale of business had taken place with respect to the dark stores. Two transactions, separate in character and in fact, had taken place. The purchase of the three stores was not the purchase of a business, but the purchase of a moribund operation without inventory, employees or customers. The stores had been closed before a deal was struck or a potential purchaser identified. The fact of renovations and temporary closure were not determinative, but the totality of circumstances indicated that a mere physical shell rather than an operating business had been transferred. The sale of the dark stores was a transfer of assets to which Section 63 was inapplicable. The application was dismissed. *Canada Safeway Limited*, [1986] OLRB Rep. March 305.

Board has discretion to order production of notes referred to by witness in refreshing memory; production inappropriate where adjournment necessary and factual basis lacking

In proceedings before the Board, the complainant admitted under cross-examination that he had referred to notes before giving his evidence in chief. However, he claimed he had refreshed his memory prior to giving evidence primarily by reading the detailed particulars of his application to the Board. During examination-in-chief the complainant did not refer to any notes. Counsel for the respondent sought production of the notes.

The Board reviewed relevant court decisions and concluded that it is a matter for the discretion of the trier of fact to determine whether to order the production of notes used to refresh a witness's memory prior to giving evidence, but not referred to during the course of his evidence. The time lapse between referring to the notes and giving evidence was a relevant factor in exercising this discretion.

The Board denied the motion for disclosure under the circumstances, noting that the respondent had not prepared the minimum factual basis for production. It had not asked the complainant when he had last referred to his notes, nor had it summonsed the notes despite ample time to do so. *Michele Gargaro*, [1986] OLRB Rep. March 329.

Certification vote rejected where anti-union petition may have been influenced by statements and actions of local community leaders associated with management

In exercising its discretion under subsection 7(2) to direct the taking of a representation vote, the Board considered the voluntariness of an anti-union petition filed in the certification application for employees of a small auto parts manufacturer in Dundalk. The applicant union argued that the voluntariness of the petition was undermined by the reasonable apprehension that two community leaders warning of job loss were expressing the views of the employer.

During the organizing campaign, the local newspaper published a letter from the Chairman of the local committee which had persuaded the employer to locate in the community. The writer cautioned that “I am led to believe a union vote would cause management to farm out more jobs in other areas, with an actual loss of jobs here”. Later in the campaign the paper published a letter from the former reeve, who was well known locally and active in community affairs. He had been instrumental in persuading the employer to locate in Dundalk and was also a trustee for funds lent by community people to the employer. Certain comments in the letter implied that he was in communication with management and that unionization would result in job loss. Two anti-union petitions were circulated within a week of the publication of the second letter, although they were never filed with the Board. Shortly afterwards, some employees met with the former reeve, who told them he had been talking with the plant manager and promised to convey their concerns to him. The former reeve toured the plant on the invitation of management, talking briefly to several employees. Anti-union petitions were filed after the Board’s notice of application for certification had been put up at the plant.

The Board decided the petitions could not be regarded as a voluntary expression of employee wishes. The Board has always been concerned that management not engage in any action during an organization campaign which might be perceived by employees as a threat to job security. Such concerns do not generally arise with respect to members of the public who enter into the debate. However, to the extent that a member of the public may be associated in the minds of employees with management, his actions and statements will take on a greater significance.

Given the association between the two community leaders and the employer, and the content of their letters, it would have been reasonable for an employee to assume that they had access to inside information from management. This perception would only have been heightened by the tour of the plant, which presumably was not open to members of the public without management permission. Nevertheless, management did nothing to dissociate itself from these statements or actions. Given that the employer was the major employer in the community, there was a reasonable likelihood that employees who had become union members subsequently signed the petition, not out of a genuine change of heart, but due to a fear that unionization would result in a threat to their job security. The Board accordingly declined to exercise its discretion to order a representation vote. *Trim Trends Canada Limited*, [1986] OLRB Rep. March 364.

VI COURT ACTIVITY

During the year under review, the Courts dealt with nine applications for judicial review. Of these, eight were dismissed. In the other case the majority of Divisional Court agreed with the applicant that the Board had violated the rules of natural justice, particularly the *audi alteram partem* rule, in having the panel hearing the case discuss a draft decision with other members and staff of the Board in the absence of the parties. The Board has been granted leave to appeal this decision to the Ontario Court of Appeal.

The Divisional Court in December 1985 heard argument by the parties and the Board in a further matter involving judicial review of a Board order that the employer and union arbitrate a grievance. The Divisional Court has reserved its decision in this case, pending the Supreme Court of Canada's decision on the appeal of a Quebec Court of Appeal decision.

In two of the eight applications for judicial review which were dismissed by the Divisional Court, the Ontario Court of Appeal declined to grant the applicants leave to appeal the Divisional Courts' decisions.

Three applications were withdrawn, discontinued or abandoned by the applicants in the year under review. The Registrar of the Supreme Court of Ontario has served Notice of Intention to Dismiss for Delay four other applications which had not been perfected in a timely fashion.

The Courts dealt with several preliminary matters as well in the year under review. In one matter the Divisional Court made a preliminary ruling on the use of affidavits in applications for judicial review. In another matter the Court granted a motion by a trade union to be added as a party to the company's application for judicial review. Finally, the Divisional Court permitted an applicant to amend its application for judicial review originally relating to a procedural ruling of the Board so as to include the subsequent decision certifying the union.

During the fiscal year seven applications to stay Board proceedings were made and all but one were dismissed. In the one application for a stay which was granted the effects of the Board's order that two companies were related employers were stayed pending the hearing of the application for judicial review. Two motions to the High Court for an expedited hearing of an application for judicial review were withdrawn by the parties prior to the scheduled Court hearings.

The following are brief summaries of matters involving the Labour Relations Board which went to court during the fiscal year.

Securicor Investigation and Security Ltd.

Supreme Court of Ontario, Divisional Court

Preliminary Ruling, April 17, 1985 — 50 O.R. (2d) 570, 10 Admin L.R. 189

April 4, 1985; Unreported

The union withdrew its complaint against the employer and, with Board consent, proceeded solely against the security firm hired by the employer to infiltrate the union during a lawful strike. The Board found that the conduct of the security firm, through an employee who posed as a striker and acted as an "agent provocateur", constituted interference with the administration of a trade

union and with the representation of employees, contrary to section 64 of the Act. The Board found that this conduct prolonged the strike by five weeks and ordered the firm to compensate employees for half of their lost earnings and the union for half of the strike pay it paid during this time. They only had to pay half of the totals because the employer may have been liable for the other half. The Board also ordered the security firm to give notice in a form prescribed to any union representing employees of an employer which retained them in anticipation of or during any strike or lockout, for a period of two years from the date of the Board decision.

The security firm applied for judicial review on the grounds that the Board exceeded its jurisdiction by granting leave to withdraw the complaint against the employer and by denying leave to the applicant to add the employer as a party or claim any relief from it; that the Board lacked jurisdiction to hear the complaint against it because the matter of *lis* between it and the union did not pertain to an employer-employee relationship or otherwise fall within the ambit of the Act; that the Board was not properly constituted to hear the complaint because no member of the Board was a representative of private investigators or security guards; that there was a bias or likelihood of bias on the part of the Board against the applicant; that the Board erred in law by misinterpreting section 64 of the Act or alternatively, that section 64 is of no force and effect for being inconsistent with the *Charter*; that there were no facts to support certain findings of the Board; that the damages assessed were "punitive, excessive, remote and without compensatory basis"; that the Board erred in apportioning liability because the employer was completely responsible in law for any damages; that the Board lacked jurisdiction to make the order for notice and to order the firm to stop infiltrating unions on behalf of employers during or in anticipation of any strike or lock-out.

In a preliminary ruling the Divisional Court held that affidavits as to the evidence before a statutory body were admissible in proceedings under the *Judicial Review Procedure Act* only for the purpose of demonstrating a complete absence of evidence on an essential point.

The application for judicial review was dismissed by the Divisional Court on April 4, 1985.

470469 Ontario Limited (Golden Griddle)
Supreme Court of Ontario, Divisional Court
May 6, 1985; Unreported

The employer sought judicial review of a Board decision on the ground that the Board exceeded its jurisdiction by certifying the respondent union without first determining whether the majority of employees who cast ballots in a representation vote wanted it to represent them. The employer objected to certain employees being on the voters' list. Nonetheless, the Board enforced a waiver, signed by the employer, allowing them to vote. A majority of ballots were cast in favour of the union. Therefore, a certificate was issued. The employer did not challenge the result of the vote during the Board hearing.

The Divisional Court dismissed the application May 6, 1985.

Consolidated-Bathurst Packaging Ltd.
Supreme Court of Ontario, Divisional Court
May 15, 1985 – 51 O.R. (2d) 481, 16 Admin. L.R. 37
Ontario Court of Appeal, June 24, 1985; Unreported

The employer's application, filed in January 1984 for judicial review on the basis of a denial of natural justice as a result of the panel having discussed a draft decision with other members and staff of the Board, was heard by the Divisional Court on April 15 and 16, 1985. The majority of the Divisional Court (Osler J. dissenting) agreed with the applicant that the Board had violated the

rules of natural justice, particularly the *audi alteram partem* rule. Costs were also awarded against the Board.

On June 24, 1985, the Ontario Court of Appeal granted the union and the Board leave to appeal the Divisional Court's decision.

The hearing of the appeal is tentatively scheduled for June 24, 1986.

Montgomery Elevator Co. Limited; Northern Elevator Limited
Supreme Court of Ontario, Divisional Court
Oct. 17, 1985; Unreported

The applicant union applied in November 1984 for judicial review of two Board decisions under section 124 of the Act holding the respective employers entitled to reassign grievors to new work without regard to collective agreement seniority provisions.

The applicants had referred grievances to the Board pursuant to its power under section 124 of the *Labour Relations Act*. Those decisions were being challenged on the ground that the Board gave the collective agreement an interpretation which the agreement could not reasonably bear, and thereby committed errors of law going to its jurisdiction.

The Divisional Court dismissed these two applications on October 17, 1985. While the relevant provisions of the collective agreement might bear a meaning different to that given to them by the Board, the Court held that it could not say that the Board gave the collective agreement a patently unreasonable meaning.

Chrysler Canada Ltd.
Supreme Court of Ontario, Divisional Court
Aug. 22, 1985; Unreported
Ontario Court of Appeal, Nov. 4, 1985; Unreported

An application for judicial review as filed by the grievor in February 1985 seeking to quash a Board decision wherein the Board exercised its discretion under section 89 of the Act to dismiss a complaint of an unfair labour practice on preliminary grounds (here, the grievor's delay in bringing the application) without entertaining the complaint on its merits. The issue raised struck at the exercise of the Board's discretion under section 89 of the Act.

On August 22, 1985, the application was dismissed by the Divisional Court. The Court held that the Board had a discretion under subsection 89(4) of the Act whether or not to hear the complaint and that the Board, in refusing to hear the complaint because of extreme delay, was not acting arbitrarily but was exercising its discretion in a reasonable and proper fashion. On November 4, 1985, the Ontario Court of Appeal dismissed the applicant's motion for leave to appeal.

Mini-Skool Ltd.
Supreme Court of Ontario, Divisional Court
June 24, 1985; Unreported
Ontario Court of Appeal, Dec. 3, 1985; Unreported

The Board dismissed a union complaint that the employer had failed to observe the relative seniorities of pre-deadline and post-deadline strike returnees in assigning employees to work after conclusion of the strike. The issue before the Board related to whether the employer had committed an unfair labour practice by the manner in which it was recalling employees after the

strike against it had settled. The union applied in November 1983 for judicial review of this Board decision on the ground that the Board gave a patently unreasonable interpretation to sections 66 and 73 of the *Labour Relations Act*.

The application was dismissed by the Divisional Court on June 24, 1985; the Court found that the Board's interpretation of section 73 was not patently unreasonable. The applicant sought leave to appeal that decision, which motion was dismissed by the Ontario Court of Appeal on December 3, 1985.

Ontario Hydro
Supreme Court of Ontario, Divisional Court
Feb. 10, 1986; Unreported

The Board dismissed the union's grievance under section 124 of the Act that the employer had, in violation of the collective agreement, refused to employ the grievor in a job at Ontario Hydro's nuclear power plant to which he had been referred by the union's hiring hall, on the ground that a previous conviction rendered him a security risk. The union applied in December 1984 for judicial review of this decision.

The Board in this case held that, in the absence of language reserving an unfettered hiring discretion, it was not unreasonable to infer that in agreeing to a particular hiring hall arrangement Hydro had also agreed to fetter its hiring discretion. The Board went on to hold, however, that Hydro did not have to hire all tradesmen referred, regardless of their reliability or competency, but that the agreement in issue did not impose a standard of "just cause" or "correctness" on Hydro. The employer subject to a hiring hall arrangement must act reasonably, in good faith and without discrimination in assessing the reliability and competency of a tradesman referred through the hiring hall.

In the particular case before the Board, the Board held that the employer was reasonably justified in its concerns about hiring the grievor at the nuclear sites. The matter was remitted back to the parties to consider the refusals to hire at various non-nuclear sites.

The applicant sought judicial review on the grounds that the Board erred in dismissing the referral and declining to give effect to the bargaining rights arising from the collective agreement; in failing to give effect to the *Canada Act, Constitution Act, 1982* and the *Charter*; in admitting certain evidence; in placing the onus of proof on the applicant in certain circumstances; in interpreting the collective agreement; in relying upon certain considerations; and in relying upon certain evidence.

In March 1985 the Registrar of the Supreme Court allowed a motion by the respondent to dismiss the application for the applicant's delay in perfecting the application. The Registrar's decision was overturned on application to the Divisional Court on March 25, 1985. A further application was brought on May 21, 1985, by the respondent to dismiss the application because of the applicant's failure to perfect. The Registrar allowed the applicant 10 days in which to file its factum, with which the applicant complied.

The Divisional Court dismissed the application on January 15, 1986, for reasons released February 10, 1986. On the matters of onus and the admission of particular evidence the Court found that the Board had not committed any jurisdictional errors.

Kirkpatrick & Town of Oakville
Supreme Court of Ontario, Divisional Court
March 11, 1986; Unreported

The complainant applied in June 1985 for judicial review of three decisions of the Board. In its April 13, 1984, decision the Board held that the Corporation of the Town of Oakville was entitled to be present at the hearing of the complainant's section 68 complaint against the union. In its May 1, 1984, decision the Board referred the complainant's complaint to arbitration and ordered that the union ensure certain legal representation at the arbitration hearing. In its January 8, 1985, decision, the Board confirmed its May 1, 1984, decision, but varied the order dealing with representation of the complainant by legal counsel.

The grounds for the applicant-complainant's application for judicial review included allegations that the Board erred in referring the matter to arbitration; in allowing the Town to be present; in ordering the union to represent the Applicant at the arbitration hearing ordered; and in not ordering the Town to produce certain documents or to appear for discoveries. The applicant argued that the Board had violated the principles of natural justice and various sections of the *Charter of Rights and Freedoms*.

An application for a stay of the Board's order was dismissed by the Divisional Court on July 12, 1985.

The Divisional Court dismissed the application on March 11, 1986, holding that it could see no jurisdictional error in the orders of the Board.

VII CASELOAD

In fiscal year 1985-86, the Board received a total of 3,236 applications and complaints, a decrease of 8 percent over the intake of 3,509 cases in 1984-85. Of the three major categories of cases that are brought to the Board under the Act, applications for certification of trade unions as bargaining agents decreased by 11 percent from last year, complaints of contravention of the Act decreased by 7 percent, and referrals of grievances under construction industry collective agreements remained about the same as last year. The total of all other types of cases decreased by 11 percent. (Tables 1 and 2).

In addition to the cases received, 930 were carried over from the previous year, for a total caseload of 4,166 in 1985-86. Of the total caseload, 2,912, or 70 percent, were disposed of during the year; proceedings in 238 were adjourned sine die* (without a fixed date of further action) at the request of the parties; and 1,016 were pending in various stages of processing at March 31, 1986.

The total number of cases processed during the year produced an average workload of 320 cases for the Board's full-time chairman and vice-chairmen, and the total disposition represented an average output of 224 cases.

Labour Relations Officer Activity

In 1985-86, the Board's labour relations officers were assigned a total of 2,263 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 54 percent of the Board's total caseload, and included 664 certification applications, 39 cases concerning the status of individuals as employees under the Act, 780 complaints of alleged contraventions of the Act, 737 grievances under construction industry collective agreements, and 43 complaints under the Occupational Health and Safety Act. (Table 3).

The labour relations officers completed activity in 1,887 of the assignments, obtaining settlements in 1,524, or 81 percent. They referred 209 cases to the Board for decisions; proceedings were adjourned sine die in 154 cases; and settlement efforts were continuing in the remaining 376 cases at March 31, 1986.

Labour relations officers were also successful in having hearings waived by the parties in 376, or 81 percent, of 463 certification applications assigned for this purpose.

Representation Votes

In 1985-86, the Board's returning officers conducted a total of 223 representation votes among employees in one or more bargaining units. Of these votes, 221 were concluded in cases that were either disposed of during the year or in which a final decision closing the case had not been rendered by the Board by March 31, 1986. Of the 221 votes concluded, 181 involved certification applications, 37 were held in applications for termination of existing bargaining rights, and 3 were taken in successor employer applications. (Table 5).

* The Board regards sine die cases as disposed of, although they are kept on docket for one year.

Of the certification votes, 132 involved a single union on the ballot and 49 involved two unions. Of the two-union votes, all entailed attempts to replace incumbent bargaining agents.

A total of 13,431 employees were eligible to vote in the 221 elections that were concluded, of whom 11,854, or 88 percent, cast ballots. Of those who participated, 53 percent voted in favour of union representation. In the 181 certification elections, 88 percent of the eligible votes cast ballots, with 55 percent of those who participated voting for union representation. In the 132 elections that involved a single union, 88 percent of the eligible voters cast ballots, of whom 48 percent voted for union representation. In the two-union elections 89 percent of the eligible voters cast ballots, with 72 percent of the participants voting for union representation.

In the 37 votes in applications for termination of bargaining rights, 93 percent of the eligible voters cast ballots, with only 25 percent of those who participated, voting for the incumbent unions. Of the 63 employees who cast ballots in the elections held in successor employer cases, 6 or 10 percent, voted for union representation.

Last Offer Votes

In addition to taking votes ordered in its cases, the Board's Registrar was requested by the Minister to conduct votes among employees on employers' last offer for settlement of a collective agreement dispute under section 40(1) of the Act. Although the Board is not responsible for the administration of votes under that section, the Board's Registrar and field staff are used to conduct these votes because of their expertise and experience in conducting representation votes under the Act.

Of the 24 requests received by the Minister during the fiscal year, votes were conducted in 12 situations, settlements were reached in 7 cases before a vote was taken, 4 cases were withdrawn, and 1 is pending.

In the 12 votes held, employees accepted the employer's offer in 4 cases by 576 votes in favour to 284 against, and rejected the offer in 8 cases by 742 votes in favour to 473 against.

Since the section was introduced in June 1980, a total of 137 requests were made to the Minister up to March 31, 1986. The employer's offer was accepted in 23 cases and turned down in 70 cases. Settlements were reached in 34 cases and the request was withdrawn in 9 cases prior to a vote being conducted.

Hearings

The Board held a total of 1,306 hearings and continuation of hearings in 1,468, or 35 percent of the 4,166 cases processed during the fiscal year. This was an increase of 55 sittings from the number held in 1984-85. Seventy-nine of the hearings were conducted by vice-chairmen sitting alone, compared with 88 in 1984-85.

Processing Time

Table 7 provides statistics on the time taken by the Board to process the 2,912 cases disposed of in 1985-86. Information is shown separately for the three major categories of cases handled by the Board — certification applications, complaints of contraventions of the Act, and referrals of grievances under construction industry collective agreements — and for the other categories combined.

A median of 43 days was taken to proceed from filing to disposition for the 2,912 cases that were completed in 1985-86, compared with 39 days in 1984-85. Certification applications were

processed in a median of 29 days, compared with 25 in 1984-85; complaints of contravention of the Act took 57 days, compared with 50 in 1984-85; and referrals of construction industry grievances required 15 days, compared with 20 in 1984-85. The median time for the total of all other cases decreased to 64 days from 77 in 1984-85.

More than 73 percent of all dispositions were accomplished in 84 days (3 months) or less, compared with 78 percent for certification applications, 70 percent for complaints of contraventions of the Act, 83 percent for referrals of construction industry grievances, and 57 percent for the total of all other types of cases. The number of cases requiring more than 168 days (6 months) to complete rose to 411 from 289 in 1984-85.

Certification of Bargaining Agents

In 1985-86, the Board received 1,025 applications for certification of trade unions as bargaining agents of employees. This was a decrease of 123 cases, or 11 percent, over 1984-85. (Tables 1 and 2).

The applications were filed by 108 trade unions, including 42 employee associations. Fifteen of the unions, each with more than 20 applications, accounted for 73 percent of the total filings: Labourers (88 cases), Carpenters (40 cases), Public Employees (CUPE) (78 cases), Food and Commercial Workers (49 cases), Service Employees International (48 cases), International Operating Engineers (73 cases), Teamsters (58 cases), United Steelworkers (78 cases), Retail Wholesale Employees (37 cases), Auto Workers (41 cases), Hotel Employees (40 cases), Ontario Public Service (45 cases), Ontario Nurses Association (26 cases), Electrical Workers (IBEW) (21 cases) and Plumbers (23 cases). In contrast, 68 percent of the unions filed fewer than 5 applications each, with the majority making just one application. These unions together accounted for 7 percent of the total certification filings. (Table 8).

Table 9 gives the industrial distribution of the certification applications received and disposed of during the year. Non-manufacturing industries accounted for 72 percent of the applications received, concentrated in construction (216 cases), health and welfare services (157 cases), accommodation and food services (61 cases), retail trade (38 cases), education and related services (64 cases), wholesale trade (47 cases), and other services (41 cases). These seven groups comprised 85 percent of the total non-manufacturing applications. Of the 289 applications involving establishments in manufacturing industries, 58 percent were in seven groups: food and beverage (22 cases), metal fabricating (37 cases), rubber and plastic products (20 cases), non-metallic minerals (20 cases), printing and publishing (22 cases), machinery (24 cases) and miscellaneous manufacturing (24 cases).

In addition to the applications received, 291 cases were carried over from last year, making a total certification caseload of 1,316 in 1985-86. Of the total caseload, 1,034 were disposed of, proceedings were adjourned in 16 cases, and 266 cases were pending at March 31, 1986. Of the 1,034 dispositions, certification was granted in 704 cases including 34 in which interim certificates were issued under section 6(2) of the Act, and 5 that were certified under section 8; 172 cases were dismissed; proceedings were terminated in 12 cases; and 146 cases were withdrawn. The certified cases represented 68 percent of the total dispositions.

Of the 888 applications that were either certified, dismissed or terminated, final decisions in 182 cases were based on the results of representation votes. Of the 182 votes conducted, 130 involved a single union on the ballot; and 52 were held between two unions, all of which affected incumbent bargaining agents. Applicants won in 91 of the votes and lost in the other 91. (Table 6).

A total of 12,776 employees were eligible to vote in the 182 elections, of whom 11,226 or 88 percent cast ballots. In the 91 votes that were won and resulted in certification, 5,012 or 82 percent of the 6,125 employees eligible to vote cast ballots, and of these voters 3,539 or 71 percent favoured union representation. In the 91 elections that were lost and resulted in dismissals, 6,214 or 93 percent of the 6,651 eligible employees participated, and of these only 36 percent voted for union representation.

Small units continued to be the predominant pattern of union organizing efforts through the certification process in 1985-86. The average size of the 704 applications that were certified was 33 employees, compared with 37 in 1984-85. Units in construction certifications averaged 7 employees, (no change from 1984-85) and in non-construction certifications they averaged 38 employees, compared with 46 in 1984-85. Seventy-six percent of the total certifications involved units of fewer than 40 employees, and about 35 percent applied to units of fewer than 10 employees. The total number of employees covered by the 704 certified cases decreased to 22,937 from 24,997 in 1984-85. (Table 10).

A median time of 22 calendar days was required to complete the 704 certified cases from receipt to disposition. For non-construction certifications the median time was 22 days, and for construction certifications the median time was 15 days. (Table 11).

Eighty-three percent of the 704 certified cases were disposed of in 84 days (3 months) or less, 75 percent took 56 days (2 months) or less, 57 percent required 28 days (one month) or less, and 40 percent were processed in 21 days (3 weeks) or less. Seventy-nine cases required longer than 168 days (6 months) to process, compared with 22 cases in 1984-85.

Termination of Bargaining Rights

In 1985-86, the Board received 155 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions. In addition, 45 cases were carried over from 1984-85.

Of the total cases processed bargaining rights were terminated in 83 cases, 35 cases were dismissed, 16 were withdrawn, 1 case was adjourned sine die, proceedings were terminated in 1 case, and 64 cases were pending at March 31, 1986.

Unions lost the right to represent 1,440 employees in the 83 cases in which termination was granted, but retained bargaining rights for 1,309 employees in the 51 cases that were either dismissed or withdrawn.

Of the 118 cases that were either granted or dismissed, dispositions in 38 were based on the results of representation votes. A total of 749 employees were eligible to vote in the 38 elections that were held, of whom 696 or 93 percent cast ballots. Of those who cast ballots, 170 voted for continued representation by unions and 526 voted against. (Table 6).

Declaration of Successor Trade Union

In 1985-86, the Board dealt with 40 applications for declarations under section 62 of the Act, on the bargaining rights of successor trade unions resulting from a union merger or transfer of jurisdiction, compared to 71 in 1984-85.

Affirmative declarations were issued by the Board in 34 cases, 4 cases were withdrawn, proceedings were adjourned sine die in one case, and 1 case was pending at March 31, 1986.

Declaration of Successor or Common Employer

In 1985-86, the Board dealt with 294 applications for declarations under section 63 of the Act, on the bargaining rights of trade unions at a successor employer resulting from a business sale, or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the Board in 12 cases, 94 cases were either settled or withdrawn by the parties, 20 cases were dismissed, proceedings were terminated or adjourned sine die in 24 cases, and 144 cases were pending at March 31, 1986.

Accreditation of Employer Organizations

Three applications were processed under sections 125 through 127 of the Act for accreditation of employer organizations as bargaining agents of employers in the construction industry. One case was withdrawn and two cases were pending at March 31, 1986.

Declaration and Direction of Unlawful Strike

In 1985-86, the Board dealt with four applications seeking a declaration under section 92 against an alleged unlawful strike by employees in the construction industry. Three cases were withdrawn and proceedings were adjourned sine die in one case.

Twenty-nine applications were dealt with seeking directions under section 92 against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 6 cases, 1 case was dismissed, 11 were withdrawn or settled, proceedings were terminated or adjourned sine die in 10 cases, and 1 case was pending at March 31, 1986.

Twenty-five applications were also processed, seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. Directions were issued in 4 cases, 1 case was dismissed, 9 were withdrawn or settled, proceedings were terminated or adjourned sine die in 8 cases, and 3 were pending at March 31, 1986.

Declaration and Direction of Unlawful Lock-out

Three applications were processed in 1985-86, seeking declarations under section 93 of the Act against alleged unlawful lock-out by construction employers. One case was dismissed, one settled and one was pending at March 31, 1986.

Four applications were also processed in seeking directions under section 93 of the Act against alleged unlawful lock-outs by non-construction employers. Proceedings were terminated or adjourned sine die in two cases, and two were pending at March 31, 1986.

Consent to Prosecute

In 1985-86, the Board dealt with 13 applications under section 101 of the Act, requesting consent to institute prosecution in court against trade unions and employers for alleged commission of offences under the Act.

Of the 13 applications processed, which included two carried over from the previous year, 8 were disposed of, two adjourned sine die and three were pending at March 31, 1986. All eight cases disposed of were withdrawn or settled.

Complaints of Contravention of Act

Complaints alleging contraventions of the Act may be filed with the Board for processing under section 89 of the Act. In handling these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a labour relations officer.

In 1985-86, the Board received 855 complaints under this section, a decrease of 7 percent over the 920 filed in 1984-85. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees for union activity in violation of sections 64 and 66 of the Act, illegal changes in wages and working conditions contrary to section 79, and failure to bargain in good faith under section 15. These charges were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

In addition to the complaints received, 270 cases were carried over from 1984-85. Of the 1,125 total processed, 758 were disposed of, proceedings were adjourned sine die in 61 cases, and 306 cases were pending at March 31, 1986.

In 621 or 82 percent of the 758 dispositions, voluntary settlements and withdrawal of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 35 cases, 67 cases were dismissed, and proceedings were terminated in the remaining 35 cases.

In the cases settled by labour relations officers and those in which Board awards were made, compensation amounting to about \$636,575 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 35 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay compensation to 183 employees for wages and benefits lost in a specified period, and 36 of these employees were also ordered reinstated.

In addition, employers in 13 cases were ordered to post a Board notice of the employees' rights under the Act, and cease and desist directions were issued to employers in 6 other cases.

Construction Industry Grievances

Grievances over alleged violation of the provisions of a collective agreement in the construction industry may be referred to the Board for resolution under section 124 of the Act. As with complaints of contraventions of the Act, the Board encourages voluntary settlement of these cases by the parties involved, with the assistance of a labour relations officer.

In 1985-86, the Board received 745 cases under this section, a decrease of less than one percent from the 751 filed in 1984-85. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and deduction of union dues, and alleged violation of the subcontracting and hiring arrangements in the collective agreement.

In addition to the cases received, 107 were carried over from 1984-85. Of the total 852 processed, 614 were disposed of, proceedings were adjourned sine die in 112 cases, and 126 cases were pending at March 31, 1986.

In 552 or 90 percent of the 614 dispositions, voluntary settlements and withdrawal of the grievance were obtained by labour relations officers, awards were made by the Board in 32 cases, 14 cases were dismissed, and proceedings were terminated in the remaining 16 cases. (Table 4).

Payments totalling about \$1,206,600 were recovered for unions and employees in the cases settled by labour relations officers and those in which Board awards were made.

MISCELLANEOUS APPLICATIONS AND COMPLAINTS

Religious Exemption

Seventeen applications were processed under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Exemptions were granted in seven cases, six cases were dismissed, one case was withdrawn and three cases were pending at March 31, 1986.

Early Termination of Collective Agreements

Twenty-nine applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 23 cases, proceedings were terminated in one case and five were pending at March 31, 1986.

Union Financial Statements

Eight complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements of the union's affairs. One case was dismissed, proceedings were terminated in three cases, and four were pending at March 31, 1986.

Jurisdictional Disputes

Thirty-nine complaints were dealt with under section 91 of the Act, involving union work jurisdiction. Fourteen cases were settled or withdrawn, proceedings were terminated or adjourned sine die in 2 cases, and 23 cases were pending at March 31, 1986.

Determination of Employee Status

The Board dealt with 98 applications under section 106(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Fifty cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Determinations were made by the Board in 5 cases, in which 2 of the 11 persons in dispute were found to be employees under the Act. Two cases were dismissed, proceedings were terminated or adjourned sine die in 5 cases, and 36 cases were pending at March 31, 1986.

Referrals by Minister of Labour

In 1985-86, the Board dealt with 5 cases referred by the Minister under section 107 of the Act for opinions on questions related to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under sections 44 or 45. Determinations were made in 4 cases, in which the Board declared the Minister's authority to appoint a conciliation officer, and 1 case was settled.

One case was referred to the Board by the Minister under section 139(4) of the Act, concerning the designations of the employee and the employer agencies in a bargaining

relationship in the industrial, commercial and institutional sector of the construction industry. The case was pending at March 31, 1986.

Trusteeship Reports

Four statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

Occupational Health and Safety Act and Environmental Protection Act

In 1985-86, the Board received 48 complaints under section 24 of the Occupational Health and Safety Act, and one complaint under section 134b of the Environmental Protection Act alleging wrongful discipline or discharge of employees for acting in compliance with these Acts. Twelve cases were carried over from 1984-85.

Of the total 61 cases processed, 25 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Four cases were granted and 5 were dismissed by the Board, proceedings were terminated or adjourned sine die in 2 cases, and the remaining 25 were pending at March 31, 1986.

Colleges Collective Bargaining Act

Twenty-six complaints were dealt with under section 78 of the Colleges Collective Bargaining Act, alleging contraventions of the Act. Seven cases were settled, 2 were dismissed, and in seventeen cases proceedings were terminated. Two cases were adjourned sine die, and 8 were pending at March 31, 1986.

One application was dealt with under section 82 for decisions on the status of individuals as employees under the Act. The case was pending at March 31, 1986.

Statistics on the cases under the Colleges Collective Bargaining Act dealt with by the Board are included in Table 1.

VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

The Ontario Labour Relations Board Report: A monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

A Guide to the Ontario Labour Relations Act: A booklet explaining in laymen's terms the provisions of the *Labour Relations Act* and the Board's practices. This publication is revised periodically to reflect current law and Board practices. The Guide is also available in French.

Monthly Highlights: A publication in leaflet form containing scope notes of significant Board decisions on a monthly basis. This publication also contains Board notices of interest to the industrial relations community and information relating to new appointments, retirements and other internal developments.

Pamphlets: To date the Board has published three pamphlets. Two of these, "Rights of Employees, Employers and Trade Unions" and "Certification by the Ontario Labour Relations Board", are available in English, French, Italian and Portuguese. The third pamphlet published last year and entitled "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board," describes unfair labour practice proceedings before the Board and also contains useful instructions in filling out Form 58, which is used to institute proceedings.

All of the Board's publications may be obtained by calling, writing, or visiting the Board's offices. The Ontario Labour Relations Board Report is available on annual subscriptions, (January – December issues inclusive) presently priced at \$45.00. Individual copies of the report may be purchased at the Government of Ontario Bookstore. Order forms for subscriptions are available from the Board.

IX STAFF AND BUDGET

At the end of the fiscal year 1985-86, the Board employed a total of 95 persons on a full time basis. The Board has two types of employees. The Chairman, Alternate-Chairman, Vice-Chairmen and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil service appointees.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$5,107,400.

X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1985-86.

Table 1	Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1985-86
Table 2	Applications and Complaints Received and Disposed of, Fiscal Years 1981-82 to 1985-86
Table 3	Labour Relations Officer Activity in Cases Processed, Fiscal Year 1985-86
Table 4	Labour Relations Officer Settlements in Cases Disposed of, Fiscal Year 1985-86
Table 5	Results of Representation Votes Conducted, Fiscal Year 1985-86
Table 6	Results of Representation Votes in Cases Disposed of, Fiscal Year 1985-86
Table 7	Time Required to Process Applications and Complaints Disposed of, by Major Type of Case, Fiscal Year 1985-86
Table 8	Union Distribution of Certification Applications Received and Disposed of, Fiscal Year 1985-86
Table 9	Industry Distribution of Certification Applications Received and Disposed of, Fiscal Year 1985-86
Table 10	Employees Covered by Certification Applications Granted, Fiscal Year 1985-86
Table 11	Time Required to Process Certification Applications Granted, Fiscal Year 1985-86
Table 12	Employment Status of Employees in Bargaining Units Certified by Industry, Fiscal Year 1985-86
Table 13	Employment Status of Employees in Bargaining Units Certified by Union, Fiscal Year 1985-86
Table 14	Occupational Groups in Bargaining Units Certified by Industry, Fiscal Year 1985-86
Table 15	Occupational Groups in Bargaining Units Certified by Union, Fiscal Year 1985-86

Table 1

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1985-86

Type of Case	Caseload		Disposed of, Fiscal Year 1985-86									Pending March 31, 1986
	Total	Pending April 1, 85	Received Fiscal Year 1985-86	Total Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die			
Total	4,166	930	3,236	2,912	953	325	77	611	946	238	1,016	
Certificate of Bargaining Agents	1,316	291	1,025	1,034	704	172	12	146	—	16	266	
Declaration of Termination of Bargaining Rights	200	45	155	135	83	35	1	16	—	1	64	
Declaration of Successor Trade Union	40	26	14	38	34	—	—	4	—	1	1	
Declaration of Successor Employer or Common Employer Status	294	103	191	128	12	20	2	35	59	22	144	
Accreditation	3	3	—	1	—	—	—	1	—	—	2	
Declaration of Unlawful Strike	4	—	4	3	—	—	—	3	—	1	—	
Declaration of Unlawful Lockout	3	1	2	2	—	1	—	—	1	—	1	
Direction respecting Unlawful Strike	54	4	50	35	10	2	3	10	10	15	4	
Direction respecting Unlawful Lockout	4	2	2	1	—	—	1	—	—	1	2	
Consent to Prosecute	13	2	11	8	—	—	—	7	1	2	3	
Contravention of Act	1,125	270	855	758	35	67	35	189	432	61	306	
Exemption from Union Security Provision in Collective Agreement	17	3	14	14	7	6	—	1	—	—	3	
Early Termination of Collective Agreement	29	1	28	24	23	—	1	—	—	—	5	
Trade Union Financial Statement	8	5	3	4	—	1	3	—	—	—	4	
Jurisdictional Dispute	39	16	23	15	—	—	1	8	6	1	23	
Referral on Employee Status	98	35	63	58	5	2	1	29	21	4	36	
(Cont'd)												

(Cont'd)

Table 1 (Cont'd)

Total Applications and Complaints Received, Disposed of and Pending
Fiscal Year 1985-86

Type of Case	Caseload		Disposed of, Fiscal Year 1985-86							Pending March 31, 1986
	Total	Pending April 1, 85	Received Fiscal Year 1985-86	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled Sine Die	
Total	4,166	930	3,236	2,912	953	325	77	611	946	1,016
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	5	3	2	5	4	—	—	—	1	—
Referral of Construction Industry Grievance	852	107	745	614	32	14	16	155	397	126
Referral from Minister on Construction Bargaining Agency	1	1	—	—	—	—	—	—	—	1
Complaint under Occupational Health and Safety Act	61	12	49	35	4	5	1	7	18	25

* Includes cases in which a request was granted or a determination made by the Board.

Table 2

Applications and Complaints Received and Disposed of Fiscal Years 1981-82 to 1985-86

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1981-82	1982-83	1983-84	1984-85	1985-86	Total	1981-82	1982-83	1983-84	1984-85	1985-86
Total	15,391	2,749	2,762	3,135	3,509	3,236	13,628	2,608	2,445	2,797	2,866	2,912
Certification of bargaining agents	4,891	1,089	758	871	1,148	1,025	4,704	1,101	767	817	985	1,034
Declaration of termination of bargaining rights	647	98	115	124	155	155	591	78	120	119	139	135
Declaration of successor trade union or employer	400	50	47	22	193	88	321	35	51	19	131	85
Declaration of common employer status	472	36	41	174	104	117	318	30	31	118	58	81
Accreditation	6	1	1	1	3	—	5	—	3	—	1	1
Declaration of unlawful strike or lockout	22	4	3	7	2	6	19	3	2	3	6	5
Direction respecting unlawful strike or lockout	289	59	76	63	39	52	209	34	61	47	31	36
Consent to prosecute	72	17	18	15	11	11	58	10	17	12	11	8
Contravention of Act	4,011	640	724	872	920	855	3,570	622	674	787	729	758
Referral of construction industry grievance	3,702	551	831	824	751	745	3,059	516	577	732	620	614
Miscellaneous	879	204	148	162	183	182	774	179	142	143	155	155

Table 3
Labour Relations Officer Activity in Cases Processed*
Fiscal Year 1985-86

Type of Case	Total Cases Assigned	Cases in Which Activity Completed			Referred to Board	Sine Die	Pending
		Total	Number	Percent			
Total	2,263	1,887	1,524	80.8	209	154	376
Certification	664	593	477	80.4	116	—	71
Interim certificate	37	27	23	85.2	4	—	10
Pre-hearing application	95	72	65	90.3	7	—	23
Other application	532	494	389	78.7	105	—	38
Contravention of Act	780	581	485	83.5	51	45	199
Construction industry grievance	737	649	504	77.7	37	108	88
Employee status	39	36	34	94.4	2	—	3
Occupational Health and Safety Act	43	28	24	85.7	3	1	15

* Includes all cases assigned to labour relations officers, which may or may not have been disposed of by the end of the year.

Table 4
Labour Relations Officer Settlements in Cases Disposed of*
Fiscal Year 1985-86

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
Total	1,464	1,248	85.2
Contravention of Act	758	621	81.9
Construction industry grievance	614	552	89.9
Employee status	58	50	86.2
Occupational Health and Safety Act	34	25	73.5

* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.

Table 5

Results of Representation Votes Conducted*
Fiscal Year 1985-86

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	
			Total	In Favour of Unions
Total	221	13,431	11,854	6,304
Certification	181	12,642	11,117	6,133
Pre-hearing cases				
One union	35	3,908	3,505	1,383
Two unions	27	3,445	3,030	2,187
Construction cases				
One union	6	70	64	18
Two unions	11	54	49	37
Regular cases				
One union	91	4,673	4,006	2,198
Two unions	11	492	463	310
Termination of Bargaining Rights	37	726	674	165
Successor Employer	3	63	63	6

* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

Table 6

Results of Representation Votes in Cases Disposed of* Fiscal Year 1985-86

Type of Case	Number of Votes				Eligible Votes				All Ballots Cast				Ballots Cast in Favour of Unions			
	Total		Lost		Total		Lost		Total		Lost		Total		Total	
	Won	98	125	91	12,776	6,125	6,651	11,226	5,012	6,214	5,804	3,539	2,265	2,393	2,393	2,393
Certification	182	91	91	91	12,776	6,125	6,651	11,226	5,012	6,214	5,804	3,539	2,265	2,393	2,393	2,393
Pre-hearing cases																
One union	35	13	22	22	3,652	906	2,746	3,323	737	2,586	1,304	465	839	839	839	839
Two unions	29	19	10	10	3,679	2,084	1,595	3,239	1,788	1,451	1,870	1,239	631	631	631	631
Construction cases																
One union	5	1	4	4	46	19	27	42	18	24	14	10	4	4	4	4
Two unions	11	6	5	5	54	38	16	49	36	13	36	33	3	3	3	3
Regular cases																
One union	90	41	49	49	4,783	2,687	2,096	4,041	2,072	1,969	2,227	1,496	731	731	731	731
Two unions	12	11	1	1	562	391	171	532	361	171	353	296	57	57	57	57
Termination of Bargaining Rights																
Successor Employer	38	5	33	33	749	89	660	696	82	614	170	44	126	126	126	126
	3	2	1	1	63	52	11	63	52	11	33	31	2	2	2	2

* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.

Table 7
Time Required to Process Applications and Complaints Disposed of, by Major Type of Case Fiscal Year 1985-86

Time Taken (Calendar Days)	All Cases			Certification Cases			Section 89 Cases			Section 124 Cases			All Other Cases		
	Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent	
Total	2,912	100.0		1,034	100.0		758	100.0		614	100.0		506	100.0	
Under 8 days	58	2.0		7	0.7		6	0.8		20	3.3		25	4.9	
8-14 days	308	12.6		78	8.2		49	7.3		169	30.8		12	7.3	
15-21 days	534	30.9		276	34.9		52	14.1		187	61.2		19	11.1	
22-28 days	262	39.9		151	49.5		53	21.1		36	67.1		22	15.4	
29-35 days	128	44.3		50	54.4		45	27.0		17	69.9		16	18.6	
36-42 days	125	48.6		48	59.0		33	31.4		19	73.0		25	23.5	
43-49 days	189	55.1		65	65.3		74	41.2		13	75.1		37	30.8	
50-56 days	161	60.6		44	69.5		64	49.6		10	76.7		43	39.3	
57-63 days	148	65.7		31	72.5		63	57.9		18	79.6		36	46.4	
64-70 days	91	68.8		27	75.1		38	62.9		7	80.8		19	50.2	
71-77 days	72	71.3		15	76.6		32	67.2		6	81.8		19	54.0	
78-84 days	53	73.1		11	77.7		21	69.9		7	82.9		14	56.7	
85-91 days	51	74.9		12	78.8		12	71.5		6	83.9		21	60.9	
92-98 days	56	76.8		11	79.9		22	74.4		6	84.9		17	64.2	
99-105 days	37	78.1		9	80.8		12	76.0		4	85.5		12	66.6	
106-126 days	97	81.4		22	82.9		17	78.2		20	88.8		38	74.1	
127-147 days	72	83.9		18	84.6		21	81.0		13	90.9		20	78.1	
148-168 days	59	85.9		7	85.3		20	83.6		8	92.2		24	82.8	
Over 168 days	411	100.0		152	100.0		124	100.0		48	100.0		87	100.0	

Table 8

**Union Distribution of Certification Applications Received and Disposed of
Fiscal Year 1985-86**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed**	Withdrawn
All Unions	1,025	1,034	704	184	146
CLC* Affiliates	537	585	409	104	72
Aluminum Brick and Glass Workers	1	2	2	—	—
Auto Workers	41	45	29	13	3
Bakery and Tobacco Workers	3	2	2	—	—
Brewery and Soft Drink Workers	6	6	4	—	2
Broadcast Employees	—	1	—	—	1
Canadian Brewery Workers	8	10	8	1	1
Canadian Paperworkers	16	12	9	3	—
Canadian Public Employees (CUPE)	78	70	51	5	14
CLC Directly Chartered	2	2	1	1	—
Clothing and Textile Workers	6	6	5	1	—
Communications-Electrical Wkrs.	1	2	—	2	—
Electrical Workers (UE)	2	4	1	3	—
Energy and Chemical Workers	14	9	5	2	2
Food and Commercial Workers	49	84	47	18	19
Glass, Pottery & Plastic Wkrs.	1	1	—	—	1
Graphic Communications Union	12	12	10	2	—
Hotel Employees	40	71	53	7	11
Ladies Garment Workers	6	6	3	—	3
Machinists	6	5	3	1	1
Molders	1	1	—	1	—
Newspaper Guild	2	2	1	1	—
Office and Professional Employees	3	4	2	2	—
Ontario Public Service Employees	45	47	36	8	3
Postal Workers	2	2	2	—	—
Railway, Transport and General Workers	7	3	3	—	—
Retail Wholesale Employees	37	44	34	8	2
Rubber Workers	1	1	—	1	—
Seafarers	1	—	—	—	—
Service Employees International	48	46	38	6	2
Technical Engineers	1	1	1	—	—
Theatrical Stage Employees	3	2	1	—	1
Transit Union (Intl.)	1	—	—	—	—

Table 8 (Cont'd)

Typographical Union	3	2	1	1	—
United Garment Workers	1	—	—	—	—
United Paperworkers	1	1	—	1	—
United Steelworkers	78	70	50	15	5
United Textile Workers	1	1	1	—	—
Upholsterers	1	1	—	—	1
Woodworkers	8	7	6	1	—

* Canadian Labour Congress.

** Includes cases that were terminated.

Non-CLC Affiliates	488	449	295	80	74
Allied Health Professionals	2	2	1	1	—
Asbestos Workers	2	1	1	—	—
Boilermakers*	4	6	4	2	—
Bricklayers International*	7	8	7	—	1
Carpenters*	40	45	26	9	10
Canadian Educational Workers	1	—	—	—	—
Canadian Operating Engineers	10	9	4	3	2
Canadian Steelworkers	2	2	2	—	—
Christian Labour Association	11	9	5	3	1
Electrical Workers (IBEW)*	21	12	8	2	2
Film Craftspeople	1	1	—	—	1
Food and Service Workers	1	1	1	—	—
Independent Local Union	42	45	25	12	8
International Operating Engineers*	73	64	50	7	7
Labourers*	88	89	50	15	24
Ontario English Catholic Teachers	2	1	—	—	1
Ontario Nurses Association	26	23	18	2	3
Ontario Public School Teachers	11	1	—	1	—
Ontario Secondary School Teachers	8	11	6	3	2
Painters*	11	9	7	2	—
Plant Guard Workers	3	3	3	—	—
Plasterers	1	—	—	—	—
Plumbers*	23	18	14	2	2
Sheet Metal Workers*	15	17	12	1	4
Structural Iron Workers*	9	6	5	—	1
Sudbury Mine Workers	1	1	—	1	—
Teamsters	58	56	42	11	3
Textile Processors	15	9	4	3	2

* These construction unions were reported as CLC (Canadian Labour Congress) affiliates in the 1981-82 report. In April 1982, following suspension by the Congress of its 12 building trades affiliates, the Asbestos Workers, Boilermakers, Bricklayers, Electrical Workers (IBEW), International Operating Engineers, Painters Plasterers, Plumbers and Sheet Metal Workers joined with the Elevator Constructors to form the Canadian Federation of Labour. The Carpenters, Labourers, Structural Iron Workers have not joined the Federation.

** Includes cases that were terminated.

Table 9

**Industry Distribution of Certification Applications Received and Disposed of
Fiscal Year 1985-86**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed*	Withdrawn
All Industries	1,025	1,034	704	184	146
Manufacturing	289	272	182	65	25
Food, beverages	22	26	21	5	—
Tobacco products	—	—	—	—	—
Rubber, plastic products	20	17	15	1	1
Leather industries	2	—	—	—	—
Textile mill products	8	11	8	3	—
Knitting mills	—	—	—	—	—
Clothing industries	8	8	5	—	3
Wood products	14	12	9	2	1
Furniture, fixtures	17	17	11	3	3
Paper, allied products	14	11	8	3	—
Printing, publishing	22	19	13	6	—
Primary metal industries	10	10	5	5	—
Metal fabricating industries	37	38	30	5	3
Machinery, except electrical	24	23	13	8	2
Transportation equipment	19	20	9	8	3
Electrical products	10	10	5	3	2
Non-metallic mineral products	20	21	13	4	4
Petroleum, coal products	—	—	—	—	—
Chemical, chemical products	18	13	7	5	1
Miscellaneous manufacturing	24	16	10	4	2
Non-Manufacturing	736	762	522	119	121
Agriculture	—	—	—	—	—
Forestry	—	—	—	—	—
Fishing, trapping	—	—	—	—	—
Mining, quarrying	5	5	5	—	—
Transportation	26	22	18	3	1
Storage	7	7	4	2	1
Communications	—	1	—	1	—
Electric, gas, water	7	9	5	2	2
Wholesale trade	47	47	36	10	1
Retail trade	38	48	36	9	3
Finance, insurance	4	6	4	2	—
Real Estate	19	20	11	1	8
Education, related services	64	57	31	14	12
Health, welfare services	157	144	115	16	13
Religious organizations	—	—	—	—	—
Recreational services	8	6	3	1	2
Management services	5	8	4	4	—
Personal services	5	1	—	—	1
Accommodation, food services	61	116	70	20	26
Other services	41	44	31	7	6

Table 9 (Cont'd)

Federal government	—	—	—	—	—
Provincial government	—	—	—	—	—
Local government	26	22	19	—	3
Other government	—	—	—	—	—
Construction	216	199	130	27	42

* Includes cases that were terminated.

Table 10

**Employees Covered by Certification Applications Granted
Fiscal Year 1985-86**

Employee Size*	Total		Construction**		Non-Construction	
	Number of Applications	Number of Employees	Number of Applications	Number of Employees	Number of Applications	Number of Employees
Total	704	22,937	130	907	574	22,030
2-9 employees	249	1,212	107	434	142	778
10-19 employees	139	1,991	15	208	124	1,783
20-39 employees	145	4,096	7	187	138	3,909
40-99 employees	129	7,336	1	78	128	7,258
100-199 employees	30	4,008	—	—	30	4,008
200-499 employees	10	2,726	—	—	10	2,726
500 employees or more	2	1,568	—	—	2	1,568

* Refers to the total number of employees in one or more bargaining units certified in an application. A total of 771 bargaining units were certified in the 704 applications in which certification was granted.

** Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the 130 certified construction industry applications shown in Table 9, which includes all applications involving construction employers whether processed under the construction industry provisions of the Act or not.

Table 11

Time Required to Process Certification Applications Granted*
Fiscal Year 1985-86

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
Total	704	100.0	574	100.0	130	100.0
Under 8 days	—	—	—	—	—	—
8-14 days	53	7.5	14	2.4	39	30.0
15-21 days	230	40.2	202	37.6	28	51.5
22-28 days	119	57.1	117	58.0	2	53.1
29-35 days	35	62.1	28	62.9	7	58.5
36-42 days	34	66.9	28	67.8	6	63.1
43-49 days	31	71.3	28	72.6	3	65.4
50-56 days	27	75.1	22	76.5	5	69.2
57-63 days	19	77.8	13	78.7	6	73.8
64-70 days	19	80.5	17	81.7	2	75.4
71-77 days	9	81.8	5	82.6	4	78.5
78-84 days	8	83.0	6	83.6	2	80.0
85-91 days	7	83.9	7	84.8	—	—
92-98 days	6	84.8	3	85.4	3	82.3
99-105 days	4	85.4	2	85.7	2	83.8
106-126 days	9	86.6	5	86.6	4	86.9
127-147 days	11	88.2	8	88.0	3	89.2
148-168 days	4	88.8	3	88.5	1	90.0
169 days and over	79	100.0	66	100.0	13	100.0

* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.

Table 12

**Employment Status of Employees in Bargaining Units Certified by Industry
Fiscal Year 1985-86**

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Industries	771	22,937	246	8,631	65	1,659	72	2,110	388	10,537
Manufacturing	189	8,816	94	4,204	2	17	16	628	77	3,967
Food, beverages	22	856	13	599	—	—	2	44	7	213
Rubber, plastic products	14	1,031	5	310	—	—	3	190	6	531
Textile mill products	8	384	5	326	—	—	—	—	3	58
Clothing industries	5	639	3	419	—	—	—	—	2	220
Wood products	9	405	6	193	—	—	—	—	3	212
Furniture, fixtures	11	428	4	199	—	—	1	38	6	191
Paper, allied products	8	418	5	312	—	—	1	36	2	70
Printing, publishing	16	1,315	13	336	—	—	—	—	3	979
Primary metal industries	5	290	2	110	—	—	2	154	1	26
Metal fabricating industries	31	1,208	7	232	—	—	2	34	22	942
Machinery, except electrical	13	236	7	178	—	—	1	24	5	34
Transportation equipment	9	487	5	336	—	—	1	41	3	110
Electrical products	5	201	2	63	—	—	1	14	2	124
Non-metallic mineral products	16	440	9	267	1	2	—	—	6	171
Chemical, chemical products	7	193	5	158	—	—	—	—	2	35
Miscellaneous manufacturing	10	285	3	166	1	15	2	53	4	51
Non-Manufacturing	582	14,121	152	4,427	63	1,642	56	1,482	311	6,570
Mining, quarrying	5	243	1	148	—	—	—	—	4	95
Transportation	19	797	6	47	3	19	—	—	10	731
Storage	4	52	1	22	—	—	—	—	3	30
Electric, gas, water	5	41	3	28	—	—	—	—	2	13
Wholesale trade	40	825	18	409	4	17	3	179	15	220
Retail trade	45	1,263	20	513	4	52	10	272	11	426
Finance, insurance	4	18	1	3	1	3	—	—	2	12
Real Estate	13	87	4	41	1	4	1	16	7	26
Education, related services	34	1,411	9	211	9	668	8	86	8	446
Health, welfare services	137	4,071	44	1,644	25	599	23	628	45	1,210
Recreational services	4	87	2	79	1	3	—	—	1	5
Management services	4	94	1	9	—	—	—	—	3	85
Accommodation, food services	76	2,963	18	826	9	178	5	139	44	1,820
Other services	34	907	13	331	2	12	—	—	19	564
Local government	25	382	10	111	4	97	5	127	6	47
Construction	133	880	1	5	—	—	1	35	131	840

Table 13

Employment Status of Employees in Bargaining Units Certified by Union Fiscal Year 1985-86

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	77	22,937	246	8,631	65	1,659	72	2,110	388	10,537
CLC	460	18,006	176	1,175	41	738	62	1,867	181	8,226
Aluminum Brick and Glass Wkrs	2	66	2	66	—	—	—	—	—	—
Auto Workers	28	1,446	8	624	1	3	2	155	17	664
Bakery and Tobacco Workers	2	213	1	141	—	—	—	—	1	72
Brewery and Soft Drink Workers	4	116	1	38	—	—	1	17	2	61
Canadian Brewery Workers	8	102	6	66	—	—	2	36	—	—
Canadian Paperworkers	10	1,108	4	99	2	5	1	36	3	968
Canadian Public Employees (CUPE)	59	2,133	23	1,070	7	83	12	413	17	567
CLC Directly Chartered	1	4	—	—	—	—	—	—	1	4
Clothing and Textile Workers	5	320	5	320	—	—	—	—	—	—
Electrical Workers (UE)	1	39	1	39	—	—	—	—	—	—
Energy and Chemical Workers	6	142	4	100	—	—	1	20	1	22
Food and Commercial Workers	60	1,698	25	638	7	118	9	231	19	711
Graphic Communication Union	10	439	8	367	—	—	—	—	2	72
Hotel Employees	56	2,237	12	544	5	103	3	47	36	1,543
Ladies Garment Workers	3	408	3	408	—	—	—	—	—	—
Machinists	3	94	1	48	—	—	—	—	2	46
Newspaper Guild	1	146	1	146	—	—	—	—	—	—
Office and Professional Empls	2	20	1	6	—	—	—	—	1	14
Ontario Public Service Empls	47	961	20	428	6	95	10	112	11	326
Postal Workers	2	83	—	—	—	—	—	—	2	83
Railway, Transport and General Workers	3	57	2	34	—	—	—	—	1	23
Retail Wholesale Employees	41	2,020	16	711	3	19	7	225	15	1,065
Service Employees International	42	1,241	10	264	7	261	6	116	19	600
Technical Engineers	1	14	—	—	—	—	1	14	—	—
Theatrical Stage Employees	1	5	—	—	—	—	—	—	1	5
Typographical Union	2	44	2	44	—	—	—	—	—	—
United Steelworkers	53	2,601	15	783	3	51	6	407	29	1,360
United Textile Workers	1	20	—	—	—	—	—	—	1	20
Woodworkers	6	229	5	191	—	—	1	38	—	—

Table 13 (Cont'd)

**Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1985-86**

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	311	4,931	70	1,456	24	921	10	243	207	2,311
Allied Health Professionals	1	46	—	—	—	—	1	46	—	—
Asbestos Workers	1	2	—	—	—	—	—	—	1	2
Boilermakers	4	99	2	36	—	—	—	—	2	63
Bricklayers International	7	36	—	—	—	—	—	—	7	36
Carpenters	26	500	4	198	—	—	2	34	20	268
Canadian Operating Engineers	4	116	—	—	1	15	—	—	3	101
Canadian Steelworkers	2	18	1	11	1	7	—	—	—	—
Christian Labour Association	6	155	2	47	1	20	—	—	3	88
Electrical Workers (IBEW)	8	79	4	37	—	—	—	—	4	42
Food and Service Workers	1	69	—	—	—	—	1	69	—	—
Independent Local Union	25	582	9	136	3	185	2	37	11	224
International Operating Engineers	52	505	4	35	1	22	1	35	46	413
Labourers	53	610	6	259	1	4	1	16	45	331
Ontario Nurses Association	24	288	6	71	78	100	—	—	10	117
Ontario Secondary School Teachers	6	694	—	—	5	541	—	—	1	153
Painters	7	50	—	—	—	—	—	—	7	50
Plant Guard Workers	3	22	1	18	1	2	1	2	—	—
Plumbers	14	75	—	—	—	—	1	4	13	71
Sheet Metal Workers	12	44	—	—	—	—	—	—	12	44
Structural Iron Workers	5	69	1	25	—	—	—	—	4	44
Teamsters	46	734	27	461	2	25	—	—	17	248
Textile Processors	4	138	3	122	—	—	—	—	1	16

Table 15

Occupational Groups in Bargaining Units Certified by Union Fiscal Year 1985-86

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	771	22,937	584	18,187	59	1,134	49	1,420	20	657	59	1,539
CLC	460	18,006	176	14,741	41	991	16	332	20	657	49	1,285
Aluminum Brick and Glass Wkrs	2	66	2	66	—	—	—	—	—	—	—	—
Auto Workers	28	1,446	26	1,440	2	6	—	—	—	—	—	—
Bakery and Tobacco Workers	2	213	2	213	—	—	—	—	—	—	—	—
Brewery and Soft Drink Workers	4	116	4	116	—	—	—	—	—	—	—	—
Canadian Brewery Workers	8	102	5	63	1	26	—	—	—	—	2	13
Canadian Paperworkers	10	1,108	8	1,057	2	51	—	—	—	—	—	—
Canadian Public Employees (CUPE)	59	2,133	27	1,395	11	311	3	34	1	12	17	381
CLC Directly Chartered	1	4	—	—	1	4	—	—	—	—	—	—
Clothing and Textile Workers	5	320	5	320	—	—	—	—	—	—	—	—
Electrical Workers (UE)	1	39	1	39	—	—	—	—	—	—	—	—
Energy and Chemical Workers	6	142	4	86	—	—	—	—	—	—	2	56
Food and Commercial Workers	60	1,698	44	1,321	3	19	—	—	12	349	1	9
Graphic Communication Union	10	439	9	405	—	—	—	—	—	—	1	34
Hotel Employees	56	2,237	55	2,194	—	—	—	—	—	—	1	43
Ladies Garment Workers	3	408	3	408	—	—	—	—	—	—	—	—
Machinists	3	94	3	94	—	—	—	—	—	—	—	—
Newspaper Guild	1	146	1	146	—	—	—	—	—	—	—	—
Office and Professional Empls	2	20	—	—	1	14	—	—	1	6	—	—
Ontario Public Service Empls	47	961	14	224	11	210	9	254	—	—	13	273
Postal Workers	2	83	2	83	—	—	—	—	—	—	—	—
Railway, Transport and General Workers	3	57	3	57	—	—	—	—	—	—	—	—
Retail Wholesale Employees	41	2,020	25	1,428	4	44	—	—	6	290	6	258
Service Employees International	42	1,241	26	884	9	273	3	30	—	—	4	54
Technical Engineers	1	14	—	—	—	—	1	14	—	—	—	—
Theatrical Stage Employees	1	5	1	5	—	—	—	—	—	—	—	—
Typographical Union	2	44	2	44	—	—	—	—	—	—	—	—
United Steelworkers	53	2,601	49	2,404	2	33	—	—	—	—	2	164
United Textile Workers	1	20	1	20	—	—	—	—	—	—	—	—
Woodworkers	6	229	6	229	—	—	—	—	—	—	—	—

Table 15 (Cont'd)

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1985-86

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	311	4,931	256	3,446	12	143	33	1,088	—	—	10	254
Allied Health Professionals	1	46	—	—	1	46	—	—	—	—	—	—
Asbestos Workers	1	2	1	2	—	—	—	—	—	—	—	—
Boilermakers	4	99	3	95	1	4	—	—	—	—	—	—
Bricklayers International	7	36	7	36	—	—	—	—	—	—	—	—
Carpenters	26	500	26	500	—	—	—	—	—	—	—	—
Canadian Operating Engineers	4	116	3	101	1	15	—	—	—	—	—	—
Canadian Steelworkers	2	18	2	18	—	—	—	—	—	—	—	—
Christian Labour Association	6	155	4	71	—	—	1	6	—	—	1	78
Electrical Workers (IBEW)	8	79	6	64	1	6	—	—	—	—	1	9
Food and Service Workers	1	69	1	69	—	—	—	—	—	—	—	—
Independent Local Union	25	582	16	318	4	57	3	138	—	—	2	69
International Operating Engineers	52	505	48	463	—	—	1	5	—	—	3	37
Labourers	53	610	50	603	2	4	—	—	—	—	1	3
Ontario Nurses Association	24	288	2	43	—	—	22	245	—	—	—	—
Ontario Secondary School Teachers	6	694	—	—	—	—	6	694	—	—	—	—
Painters	7	50	7	50	—	—	—	—	—	—	—	—
Plant Guard Workers	3	22	3	22	—	—	—	—	—	—	—	—
Plumbers	14	75	14	75	—	—	—	—	—	—	—	—
Sheet Metal Workers	12	44	12	44	—	—	—	—	—	—	—	—
Structural Iron Workers	5	69	5	69	—	—	—	—	—	—	—	—
Teamsters	46	734	42	665	2	11	—	—	—	—	2	58
Textile Processors	4	138	4	138	—	—	—	—	—	—	—	—

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J.W. MURRAY

P.J. O'KEEFFE

W.S. O'NEILL

D.A. PATTERSON

H. PEACOCK

R.W. PIRRIE

J. REDSHAW

K.V. ROGERS

J.A. RONSON

M.A. ROSS

J.A. RUNDLE

J. SARRA

G.O. SHAMANSKI

R.M. SLOAN

I.M. STAMP

M. STOCKTON

R.J. SWENOR

E.G. THEOBALD

W.H. WIGHTMAN

J.P. WILSON

N.A. WILSON

R. WILSON

D. WOZNIAK

*Registrar and Chief
Administrative Officer*

D.K. AYNSLEY

Senior Solicitor

N.V. DISSANAYAKE

Board Solicitors

C. EDWARDS

K.A. MacDONALD

**ONTARIO
LABOUR RELATIONS BOARD**

ANNUAL REPORT
1986-87



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Ontario
Labour Relations
Board

Commission
des relations
de travail de l'Ontario

Office of the Chair

Bureau du président

400 University Avenue
Toronto, Ontario
M7A 1V4
416/965-4193

The Honourable William Wrye,
Minister of Labour,
400 University Avenue,
Toronto, Ontario.
M7A 1T7

Dear Minister:

It is my pleasure to provide to you the seventh Annual Report of the Ontario Labour Relations Board for the period commencing April 1, 1986 to March 31, 1987.

Sincerely,

Judge Rosalie S. Abella,
Chair.

CHAIR'S MESSAGE

Previous messages on this page alluded annually to the concentrated efforts at maintaining an atmosphere conducive to effective decision-making. The Board has historically enjoyed a remarkable degree of credibility through its decisions, decision-makers, settlement officers, administrative team, and support staff. These are still the benchmarks of a tribunal's integrity, and efforts this year continue to demonstrate the Board's desire to remain responsive through settlement and decision-making to the needs of the labour relations community. We have substantially reduced the backlog, decisions issue with greater alacrity, hearings are conducted and scheduled more expeditiously, and settlements remain a clear priority. The Board has met the challenge of First Contract legislation, introduced computers to streamline its process, and expanded the adjudicative pool to respond to an increased caseload.

But the Board, like any other institution, depends primarily for its prestige on its human resources. One of the most reliable of these resources has been the Registrar, Don Aynsley who will be retiring on July 31, 1987. For eleven years, Aynsley has patiently steered the Board and the labour bar through scheduling labyrinths. Daily, with respect for the system and its players, and with an overwhelming commitment to the Board, he has seen the tribunal through successions of personnel changes and has earned the deep affection and admiration of everyone with whom he has worked.

The bar rightly has a highly developed sense of gratitude for his wise discretion and accessibility. The support staff rightly has a highly developed sense of gratitude for his sensitivity in managing the scheduling process. The settlement officers rightly appreciate his perpetual willingness to listen, offer advice, and accommodate their needs. The Board members and vice-chairs are rightly in awe of his endless generosity, cooperation and collegiality. And every head of this Board who has had the privilege of working with him understands how prodigious is his willingness to adjust to the needs of changing times and personalities.

While it is undoubtedly true that no one is indispensable, particularly in a team-oriented working environment, it is equally true that some people are irreplaceable, through their unique gifts and their extraordinary willingness to share them with others in pursuit of a common cause. Aynsley's cause as Registrar was the Board, and everything he did in that role was done with wisdom, gentleness, and devotion. He remains an enduring presence and leaves a legacy he ought rightly to feel proud of.

I INTRODUCTION

This is the seventh issue of the Ontario Labour Relations Board's Annual Report, which commenced publication in the fiscal year 1980-81. This issue covers the fiscal year April 1, 1986 to March 31, 1987.

The report contains up-to-date information on the organizational structure and administrative developments of interest to the public and notes changes in personnel of the Board. As in previous years, this issue provides a statistical summary and analysis of the work-load carried by the Board during the fiscal year under review. Detailed statistical tables are provided on several aspects of the Board's functions.

This report contains a section highlighting some of the significant decisions of the Board issued during the year. A brief description of every Board matter that was subject to review by the courts during the year is provided. Since many of these court decisions are unreported, the summaries in the Board's Annual Report have been helpful to the practising bar. The report continues to provide a legislative history of the *Labour Relations Act* and notes any amendments to the Act that were passed during the fiscal year.

II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of a public hearing before a select committee of the Provincial Legislative Assembly. Although the establishment of a "Labour Court" was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee's report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

"... the shape and structure of the collective bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its 'judicial' role." (MacDowell, R.O., "Law and Practice before the Ontario Labour Relations Board" (1978), 1 Advocate's Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today — management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers — something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when disputes arise in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944). In his book, *The Ontario Labour Court 1943-44*, (Queen's University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court's early demise:

"... the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944."

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a war time move by the Federal Government to centralize

labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over “property and civil rights.” (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5).

The Act was subsequently amended so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, “opt in” to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the Federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations “in the same form and to the same effect as that . . . Act which may be passed by the Parliament of Canada at the session currently in progress . . .” This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board’s role was fairly limited. There was no enforcement mechanism at the Board’s disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lock-out unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary of the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board’s power was quite limited. The power to make certain declarations, determinations, or to grant consent to prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the Board’s acquisition of the power to grant a trade union “successor” status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of “successor employers” was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

The Labour Relations Amendment Act, 1960, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" (*Report of The Royal Commission on Labour Management Relations in the Construction Industry*, March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the Province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" (*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry of Ontario*, May, 1976) (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31). Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, the Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created "duty of fair representation". This duty, imposed on trade unions, required them not to act in a manner which was arbitrary, discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make "cease and desist" orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and be enforceable as orders of the Court.

A major increase in the Board's remedial powers under the *Labour Relations Act* occurred 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board's remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make "cease and desist" orders with respect to

any unlawful strike or lock-out. It was in 1975 as well, that the Board's jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, the *Labour Relations Amendment Act, 1980 (No. 2)*, S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer's final offer at the request of their employer. In June of 1983, the *Labour Relations Amendment Act, 1983*, S.O. 1983, c. 42, became law. It introduced into the Act section 71a, which prohibits strike related misconduct and the engaging of or acting as, a professional strike-breaker. To date the Board has not been called upon to interpret or apply section 71a.

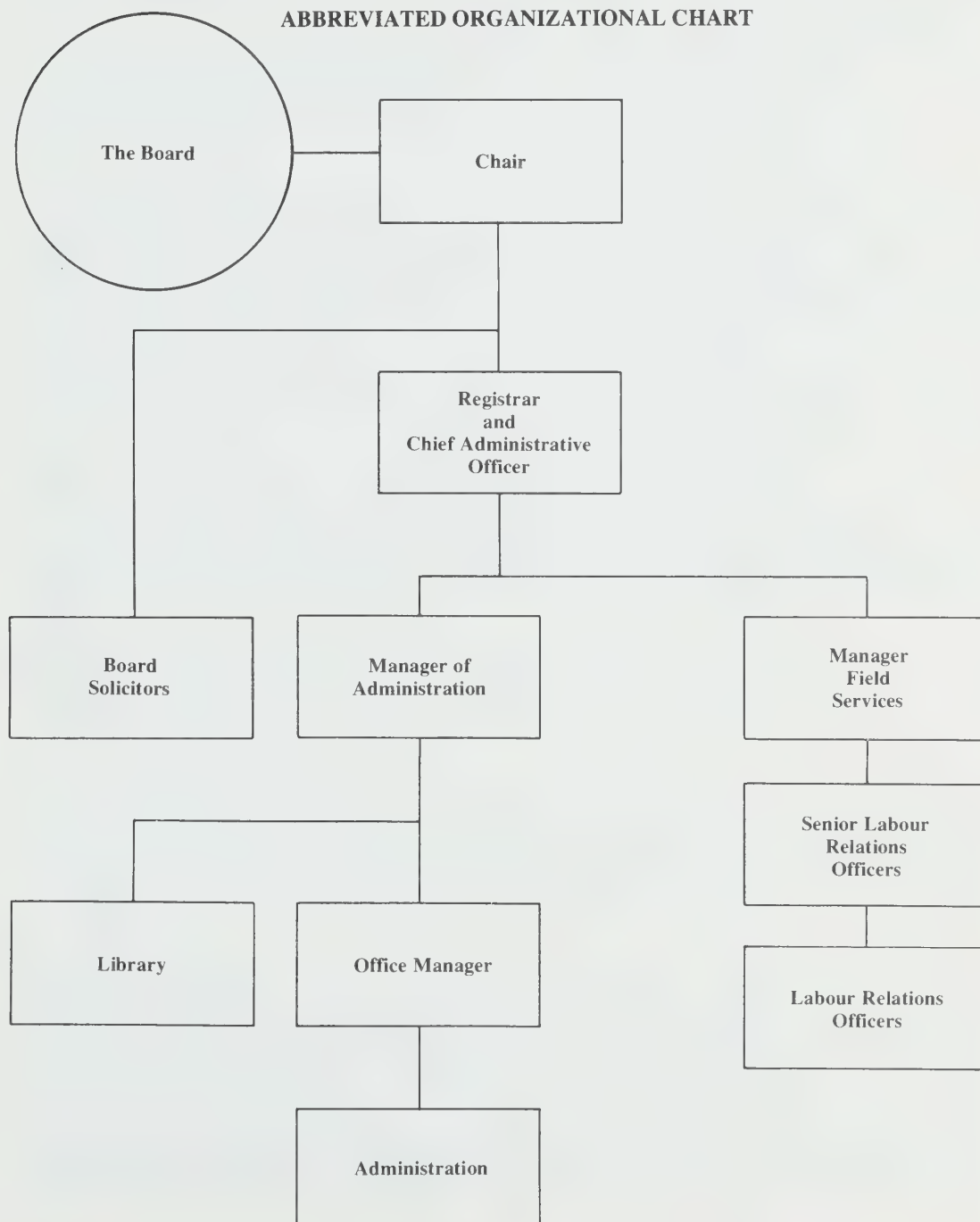
In June of 1984, the *Labour Relations Act, 1984*, S.O. 1984, c. 34 was enacted. This Act dealt with several areas. It gave the Board explicit jurisdiction to deal with illegal picketing or threats of illegal picketing and permits a party affected by illegal picketing to seek relief through the expedited procedures in sections 92 and 135, rather than the more cumbersome process under section 89. The Act also permitted the Board to respond in an expedited fashion to illegal agreements or arrangements which affect the industrial, commercial and institutional sector of the construction industry. It further established an appropriate voting constituency for strike, lock-out and ratification votes in that sector and provided a procedure for complaints relating to voter eligibility to be filed with the Minister of Labour. The new amendment also eliminated the 14 day waiting period before an arbitration award which is not complied with may be filed in court for purposes of enforcement.

In May of 1986, the *Labour Relations Amendment Act, 1986*, S.O. 1986, c. 17 was passed to provide for first contract arbitration. Where negotiations have been unsuccessful, either party can apply to the Board to direct the settlement of a first collective agreement by arbitration. Within strict time limits the Board must determine whether the process of collective bargaining has been unsuccessful due to a number of enumerated grounds. Where a direction has been given, the parties have the option of having the Board arbitrate the settlement.

III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:

ABBREVIATED ORGANIZATIONAL CHART



IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act*, R.S.O. 1980, c. 228, as follows:

“ . . . it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, first contract arbitration, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chair and an Alternate Chair, several Vice-Chairs and a number of Members representative of labour and management respectively in equal numbers. At the end of the fiscal year the Board consisted of the Chair, Alternate Chair, 13 full-time Vice-Chairs, 4 part-time Vice-Chairs and 41 Board Members, 17 full-time and 24 part-time. These appointments were made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Labour Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for the formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the Act, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not subject to appeal and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report from time to time. During the year under review Practice Note 18 “Application for Direction that a First Collective Agreement be Settled by Arbitration”, and 19, “Settlement of First Collective Agreement by the Board”, were issued.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, policemen or firemen, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 74. On the other hand, the Board has full jurisdiction over employees employed by municipalities and hospitals. A distinct piece of legislation, the *Hospital Labour Disputes Arbitration Act*, stipulates special laws that govern labour relations of hospital employees, particularly with respect to the resolution of collective bargaining disputes

and the *Successor Rights (Crown Transfers) Act*, R.S.O. 1980, c. 489 provides for application to the Board where there is a transfer of an undertaking from the crown to an employer and vice versa. The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. A similar jurisdiction is conferred on the Board by section 134b of the *Environmental Protection Act*, R.S.O. 1980, c. 141, proclaimed in November 1983 by S.O. 1983, c. 52, s. 22. From time to time the Board is called upon to determine the impact of the *Canadian Charter of Rights and Freedoms* on the rights of parties under the *Labour Relations Act*.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Legal Services.

(a) ADMINISTRATIVE DIVISION

The Registrar and the Chief Administrative Officer is the senior administrative official of the Board. He is responsible for co-ordinating the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. He determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings or on particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload within the resources allocated to it underpins much of its contribution to labour relations harmony in this province.

The Manager of Administration manages the day-to-day administrative operation while the Manager of Field Services manages the field operations. An Administrative Committee comprised of the Chair, Alternate Chair, Registrar, Manager of Administration, Manager of Field Services and Senior Solicitor meets regularly to discuss all aspects of Board administration and management.

The administrative division of the Board includes: office management, case monitoring, and library services.

1. Office Management

An administrative support staff of approximately 60, headed by an Office Manager who reports to the Manager of Administration and a Senior Clerical Supervisor, process all applications received by the Board.

2. Case Monitoring

The Board continues to rely on its computerized case monitoring system. Data on each case are coded on a day-to-day basis as the status changes. Reports are then issued on a weekly and monthly basis on the progress of each proceeding from the filing of applications or complaints to their final disposition.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide statistical information to senior management that is used as a basis for recommendations regarding improvements or

changes in Board practices and procedures which can lead to increased productivity and better service to the community.

3. Library Services

The Ontario Labour Relations Board Library employs a staff of 3, including a full-time professional librarian. The Library staff provides research services for the Board and assists other library users.

The Board Library maintains a collection of approximately 1200 texts, 25 journals and 30 case reports in the areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The library has approximately 4,500 volumes. The collection includes decisions from other jurisdictions, such as the Canada Labour Relations Board, the U.S. National Labor Relations Board and provincial labour boards across Canada.

The Library staff maintains computer indexes to the Board's Monthly Report of decisions. It provides access by subject, party names, file number, statutes considered, cases cited, date, etc. The system also provides a microfiche index to the decisions. It permits Board members and staff prompt and accurate access to previous Board decisions dealing with particular issues under consideration. The Board is the first labour relations tribunal in Canada to develop and implement this type of system. It has been reviewed by officials from a number of labour relations boards and may be used as a model in the development of other computerized retrieval systems.

The Library staff has also compiled a manual index to the Bargaining Units certified by the Board since 1980. This index provides access by union name and subject.

(b) FIELD SERVICES

In view of the Board's continuing belief that the interests of parties appearing before it, and labour relations in the province generally, are best served by settlement of disputes by the parties without the need for a formal hearing and adjudication, the Board attempts to make maximum use of its labour relations officers' efforts in this area. Responsibility for the division lies with the Manager of Field Services. In promoting overall efficiency, the manager puts emphasis upon the setting and monitoring of performance standards, case assignments, staff development and maintaining liaison with the Board. He is assisted by three Senior Labour Relations Officers, each of whom is assigned a team of officers. In addition to undertaking their share of the caseload in the field, the Senior Labour Relations Officers are responsible for providing guidance and advice in the handling of particular cases, managing the settlement process on certification days on a rotating basis, and assisting with the performance appraisals of the officers. In addition to the Labour Relations Officers, the Board employs two Returning/Waiver Officers. They conduct representation votes directed by the Board, as well as last offer votes directed by the Minister of Labour (see sec. 40 of the Act). They also carry out the Board's programme for waiver of hearings in certification applications.

The Board's field staff continued its excellent record of performance throughout the fiscal year under review. In relation to complaints under the *Labour Relations Act* and the *Occupational Health and Safety Act*, the officers handled a total caseload of 921 assignments, of which 86.8 percent were settled by the efforts of the officers. The officers handled a total of 916 grievances in the construction industry of which 92.4 percent were settled. Of 276 certification applications dealt with under the waiver of hearings programme, the officers were successful in 182 or 66 percent.

The Alternate Chair of the Board supervises the activities of the field officers, and along with the Manager of Field Services and the Board Solicitors, meets with the officers on a monthly basis

to deal with administrative matters and review Board jurisprudence affecting officers' activity and other policy and legal developments relevant to the officers' work.

(c) **LEGAL SERVICES**

Legal services to the Board are provided by the Solicitors' Office. The office consists of three Board solicitors, who report directly to the Chair. The Board also employs two articling students to assist the solicitors in carrying out the functions of the Solicitors' Office.

The Solicitors' Office is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chair, Vice-Chair and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Solicitors' Office is responsible for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the solicitors. When preparation or revision of practice notes, Board Rules or forms become necessary, the solicitors are responsible for undertaking those tasks.

The solicitors are active in the staff development programme of the Board and a solicitor regularly meets with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, a solicitor prepares written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The solicitors also advise the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Solicitors' Office is the representation of the Board's interests in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, a solicitor, in consultation with the Chair, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Solicitors' Office is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

The Solicitors' Office is responsible for all of the Board's publications. One of the Board's solicitors is the Editor of the Ontario Labour Relations Board Reports, a monthly series of selected Board decisions which commenced publication in 1944. This series is one of the oldest labour board reports in North America. In addition to reporting Board decisions, each issue of the Reports contains a section listing all of the matters disposed of by the Board in the month in question, including the bargaining unit descriptions, results of representation votes and the manner of disposition.

The Solicitors' Office also issues a publication entitled "Monthly Highlights". This publication, which commenced in 1982, contains scope notes of significant decisions of the Board issued during the month and other notices and administrative developments of interest to the labour relations community. This publication is sent free of charge to all subscribers to the Ontario Labour Relations Board Reports. The Solicitors' Office is also responsible for periodically revising the publication entitled "A Guide to the Labour Relations Act", which is an explanation in layman's terms, of the significant provisions of the Act. The latest revision took place in June, 1986, to reflect the amendments to the Act.

MEMBERS OF THE BOARD

At the end of the fiscal year 1986-87, the Board consisted of the following members:

JUDGE ROSALIE S. ABELLA *Chair*

Judge Abella assumed office as Chair of the Board on September 19, 1984. After graduating from University of Toronto Law School in 1970, she practised law until her appointment in 1976 as a judge of the Ontario Provincial Court (Family Division). In addition to carrying out her judicial functions, Judge Abella's professional background includes: Member, Ontario Public Service Labour Relations Tribunal, 1975-76; Commissioner, Ontario Human Rights Commission, 1975-80; Member, Premier's Advisory Committee on Confederation, Ontario, 1977-82; Co-Chairman, University of Toronto Academic Discipline Tribunal, 1976-1984; Director, International Commission of Jurists (Canadian Section), 1982; Director, Canadian Institute for the Administration of Justice, 1983; and Chairman, Report on Access to Legal Services by the Disabled, 1983.

In 1983 Judge Abella was appointed as Sole Commissioner, Royal Commission on Equality in Employment. The report of this Commission was submitted to the Federal Government in November of 1984.

RICHARD (RICK) MacDOWELL *Alternate Chair*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), an M.Sc. (with Distinction) in Economics from the London School of Economics and Political Science (1970) and an LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chair in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit. During May-August, 1984, Mr. MacDowell served as the Board's Alternate Chair in an acting capacity.

LITA-ROSE BETCHERMAN *Vice-Chair*

Dr. Betcherman was appointed as a part-time Vice-Chair in January 1985. She holds degrees of B.A. (1948, University of Toronto); M.A. (1961, Carlton University); and Ph.D. (1969, University of Toronto). For many years she has served the labour relations community as arbitrator, both interest and grievance, and has also acted as referee under the Ontario *Employment Standards Act*. From 1966 to 1972 she was Director of the Women's Bureau, Ontario Ministry of Labour. In 1972 she was appointed chairman of an inter-ministerial committee which prepared the Green Paper on Equal Opportunity Programs for Women in the Public Service. She has been a member of the Ontario Human Rights Commission, Ontario Press Council, Education Relations Commission, and the Judicial Council of Ontario. She is the author of two books which deal respectively with the history of fascism and communism in Canada in the interwar period.

JAMES HAROLD BROWN *Vice-Chair*

Mr. Brown joined the Board as a Vice-Chair in July, 1986. He is a graduate of the University of Toronto (B.A., 1952), attended Osgoode Hall Law School, and was called to the Ontario Bar in 1956. He did graduate work in business administration at the University of Pennsylvania (1960-61). He was appointed Deputy Chairman of the Ontario Labour Relations Board in 1962, later serving as Alternate Chairman. Mr. Brown subsequently was Chairman of the Federal Public Service Staff

Relations Board. Mr. Brown is an experienced arbitrator and has been a lecturer in labour-management relations at the University of Toronto.

HARRY FREEDMAN *Vice-Chair*

Mr. Freedman was appointed a Vice-Chair of the Board in September, 1984. Having acquired the degrees of B.A. (University of Toronto, 1971) and LL.B. (Osgoode Hall Law School, 1975), Mr. Freedman was called to the Ontario Bar in 1977. He practised labour law with a Toronto law firm until April, 1979, when he became the Ontario Labour Relations Board's Senior Solicitor. He held this position until his appointment as Vice-Chair. Mr. Freedman has been associated with Ryerson Polytechnical Institute for several years as a lecturer in industrial relations, and has taught a seminar course in grievance arbitration at Osgoode Hall Law School. He has authored several papers on labour relations practice in Ontario, and actively participates in the preparation of the labour law continuing education programme of the Law Society of Upper Canada. He is also an instructor in the Administrative Law and Charter of Rights section of the Law Society's Bar Admission Course. Mr. Freedman also acts as a grievance arbitrator.

R. A. (RON) FURNESS *Vice-Chair*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his LL.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chair in 1969.

OWEN V. GRAY *Vice-Chair*

Mr. Gray joined the Board as a Vice-Chair in October, 1983. He is a graduate of Queen's University, Kingston (B.Sc. Hons, 1971) and the University of Toronto (LL.B. 1974). After his call to the Ontario Bar in 1976, Mr. Gray practised law with a Toronto law firm until his appointment to the Board.

ROBERT J. HERMAN *Vice-Chair*

Mr. Herman was appointed a Vice-Chair of the Board in November, 1985, and was at that time a Solicitor for the Board. He is a graduate of the University of Toronto (B.Sc. 1972, LL.B. 1976) and received his LL.M. from Harvard University in 1984. Mr. Herman has taught courses in various areas of law, both at Ryerson Polytechnical Institute and the Faculty of Law, University of Toronto.

ROBERT D. HOWE *Vice-Chair*

Mr. Howe was appointed to the Board as a part-time Vice-Chair in February, 1980 and became a full-time Vice-Chair effective June 1, 1981. He graduated with a LL.B. (gold medallist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 he was a law professor of the Faculty of Law, University of Windsor. From 1977 until his appointment to the Board, he practised law as an associate of a Windsor law firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator. During May-August, 1984, Mr. Howe served as Chairman of the Board in an acting capacity.

PATRICIA HUGHES *Vice-Chair*

Patricia Hughes is a graduate of McMaster University (B.A. Hons., 1970; M.A., 1971) and, following a year of teaching at Brandon University in Manitoba, of the University of Toronto

(PH.D., 1975, in Political Economy). After teaching political science for four years at Nipissing University College in North Bay, Dr. Hughes entered Osgoode Hall Law School; she received her LL.B. in 1982. She was called to the Ontario bar in 1984. As counsel in the Policy Development Division of the Ontario Ministry of the Attorney General, she assessed Ontario legislation in light of the requirements of the *Canadian Charter of Rights and Freedoms*, with particular responsibility for pension legislation. She has researched, lectured and published in various areas of political science and law, including Canadian politics, feminist analysis, the Charter of Rights and employment law. Dr. Hughes was appointed to the Board as a Vice-Chair in April, 1986.

PAULA KNOPF *Vice-Chair*

Mrs. Knopf joined the Board as a part-time Vice-Chair in August, 1984. She graduated with a B.A. from the University of Toronto, 1972, and LL.B. from Osgoode Hall Law School, 1975. Upon her call to the Ontario Bar in 1977, she practised law with a Toronto law firm briefly before commencing her own private practice with emphasis in the area of labour relations. A former member of the faculty of Osgoode Hall Law School, Mrs. Knopf is an experienced fact-finder, mediator and arbitrator.

JUDITH McCORMACK *Vice-Chair*

Ms. McCormack was appointed to the Board as a Vice-Chair in 1986. She did her undergraduate work at Simon Fraser University, and graduated with an LL.B. from Osgoode Hall Law School in 1976. Upon her call to the Bar in 1978, she practiced labour law for the next eight years, first with a Toronto law firm and later as an in-house counsel. In 1986 she received her LL.M. in labour law from Osgoode Hall Law School. Ms. McCormack is the author of a number of articles on labour relations and has lectured in this area.

MORTON G. MITCHNICK *Vice-Chair*

Mr. Mitchnick was appointed as a full time Vice-Chair of the Board in November 1979. A native of Hamilton, Ontario, Mr. Mitchnick graduated with a B.A. from McMaster University in 1967 and completed his LL.B. at the University of Toronto Law School in 1970. After his call to the Bar in 1972, he engaged in the practice of labour law with a Toronto law firm until his appointment to the Board. Mr. Mitchnick reverted to part-time status with the board as of November 1985, and shares his time with a private arbitration and mediation practice together with various forms of legal scholarship.

KEN PETRYSHEN *Vice-Chair*

Mr. Petryshen was appointed a Vice-Chair in June, 1986. He is a graduate of the University of Saskatchewan, Regina (B.A. Hons., 1972) and Queen's University, Kingston (LL.B. 1976). After articling with the Ontario Labour Relations Board and after his call to the Bar in 1978, Mr. Petryshen practised law as a staff lawyer for the Teamsters Joint Council, No. 52. Prior to his appointment as a Vice-Chair, Mr. Petryshen was a Board Solicitor.

NORMAN B. SATTERFIELD *Vice-Chair*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chair. Mr. Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He was involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years prior to his appointment as a Vice-Chair. Mr. Satterfield is a past Director of the Construction Labour

Relations Association of Ontario and a past Member of the National Industrial Relations Committee of the Canadian Manufacturers' Association.

VICTOR SOLOMATENKO *Vice-Chair*

Mr. Solomatenko is a graduate of York University (B.A., 1969) and the University of Toronto (LL.B., 1974). Following his call to the Ontario Bar in 1976, Mr. Solomatenko was employed by several unions and a firm of pension and benefits consulting actuaries. From 1980 to 1985, he edited and published a pension and employee benefits newsletter. Prior to his appointment to the Board, Mr. Solomatenko was acting as a grievance arbitrator.

IAN C.A. SPRINGATE *Vice-Chair*

Mr. Springate had been a Vice-Chair of the Board since May of 1976 before being appointed as the Board's Alternate Chair in October of 1984. He has degrees of B.A. with distinction (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chair. Mr. Springate taught in the M.B.A. programme at McMaster University as a part-time lecturer in industrial relations from 1973 to 1978. He is an experienced arbitrator. From February 1984 to January 1985, he served as Acting Chairman of the Crown Employees Grievance Settlement Board. Mr. Springate reverted to part-time Vice-Chair status with the Board in February, 1987.

GEORGE T. SURDYKOWSKI *Vice-Chair*

Mr. Surdykowski joined the Board as a Vice-Chair in June, 1986. He is a graduate of the University of Waterloo (B.E.S., 1974) and Osgoode Hall Law School (LL.B. 1980). After his call to the Ontario Bar in 1982, Mr. Surdykowski practised law in Toronto until his appointment to the Board.

SUSAN TACON *Vice-Chair*

Ms. Tacon joined the Labour Relations Board as a Vice-Chair in July, 1984. She holds a B.A. degree (1970) from York University and LL.B. (1976) and LL.M. (1978) degrees from Osgoode Hall Law School. She is an experienced arbitrator and has taught a seminar on collective bargaining and labour relations at Osgoode Hall Law School. Ms. Tacon has several publications, including a text and several articles in law journals.

Members Representative of Labour and Management

BROMLEY L. ARMSTRONG

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in February of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr. Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board. Mr. Armstrong was honoured by the Government of Jamaica when he was appointed a Member of the Order of Distinction in the rank of officer, in the 1983 Independence Day Civil Honours List, and the City of Toronto Award of Merit, March 1984.

CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

FRANK C. BURNET

In December, 1983, Mr. Burnet was appointed a part-time Board Member representing management. After graduating from the University of Saskatchewan (B.A. Economics, 1940) Mr. Burnet was engaged in personnel capacities in several corporations in Ontario and Quebec. In 1970 he joined Inco Ltd., as its Director of Industrial Relations responsible for all Canadian Operations. From 1972 until his retirement in 1982, Mr. Burnet held the position of Vice-President Employee Relations, responsible for employee relations activities in Canada, U.S., U.K., and other foreign operations. The many offices Mr. Burnet has held include: Chairman, National Industrial Relations Committee of the Canadian Manufacturers' Association, 1978-81; Governor and Member of the Executive Committee of the Canadian Centre for Occupational Health and Safety, 1982-83; Member of OECD Joint Labour-Management team studying technological change in the U.S. (1963) and incomes policy in the U.K. and Sweden, (1965).

LEONARD C. COLLINS

Mr. Collins was appointed a part-time Member of the Board representing labour in November, 1982. Prior to joining the Board Mr. Collins had been very active in the trade union movement in Ontario. From 1945 to 1960 he held various positions with Local 232 of the United Rubber Workers, including the positions of Vice-President from 1950 to 1954 and President from 1954 to 1960. In 1960 he was appointed International Field Representative for the United Rubber Workers and later served as acting Director of District 6.

WILLIAM A. CORRELL

A graduate of McMaster University (B.A. 1949), Mr. Correll was appointed in January, 1985, as a part-time Board Member representing management. He joined the Board with an impressive background in the personnel field. Having held responsible personnel positions at Stelco, Atomic Energy of Canada Limited and DeHavilland Aircraft of Canada Limited for a number of years, Mr. Correll joined Inco Limited in 1971. After serving as that company's Assistant Vice-President and Director of Industrial Relations, in 1977 Mr. Correll became Vice-President of Inco Metals Company. He has lectured on personnel and management subjects at community college and university level and has conducted seminars for various management groups. He is active as management representative on boards of arbitration and on various management organizations.

MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. Mr. Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he has held include: Director of Labour Relations of the Ontario Federation of Construction Associations; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel; Director of Industrial Relations, Kaiser

Canada; Manager of Industrial Relations of the SNC Group; and Executive Director of the Construction Employers Co-ordinating Council of Ontario. Mr. Eayrs is a past Chairman of the National Labour Relations Committee of the Canadian Construction Association, and is presently a vice-chairman of the Joint Labour-Management Construction Industry Advisory Board. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

ANDRE ROLAND FOUCAULT

Mr. Foucault was appointed a part-time Board Member representing labour in January, 1986. A member of the Canadian Paper Workers Union since 1967, he has held several elected positions within that union, including that of first Vice-President. In February 1982, Mr. Foucault joined the staff of the Canadian Paperworkers Union as a National Representative. In 1976 he was appointed to the position of Programmes Co-ordinator of the Ontario Federation of Labour.

ROBERT J. GALLIVAN

In January, 1985, Mr. Gallivan was appointed a part-time Board Member representing management. After holding several senior personnel positions with C.I.L. Inc., Mr. Gallivan became that company's national Employee Relations Manager, a position he held for thirteen years prior to his retirement. For many years, he has been an active member of various management organizations, including the Canadian Chamber of Commerce, the Canadian Manufacturers' Association and the Canadian Chemical Producers' Association. Mr. Gallivan continues to serve as management representative on arbitration boards and on various government boards and commissions on a part-time basis.

PAT V. GRASSO

Appointed a part-time member of the Board representing labour in December, 1982, Mr. Grasso has been active in the labour movement in Ontario for many years. Having held various offices in District 50 of the United Mine Workers of America, he was appointed Staff Representative in 1958, and Assistant to the Regional Director for Ontario in 1965. In 1969, Mr. Grasso became the Regional Director for Ontario and was elected to the International Executive Board. When District 50 merged with the United Steelworkers of America in 1972, he became Staff Representative of the Steelworkers in charge of organizing in the Toronto area. In January 1982, Mr. Grasso was transferred to the District 6 office of the Steelworkers and appointed District Representative in charge of co-ordinating, organizing and special projects.

JACQUELINE G. GRIFFIN

Ms. Griffin was appointed a part-time Board Member representing management in March, 1986. Ms. Griffin, who holds a B.A. from the University of Ottawa, has a long career in personnel administration with the Ontario Government. In 1980 she was appointed Personnel Commissioner for the City of Scarborough. Ms. Griffin is a former Director and Vice-President of the Personnel Association of Toronto and a current member of the Toronto Chapter Executive of the Institute of Public Administration, the Ontario Government's Classification Rating Committee, Public Service Grievance Board, and the Financial Times Human Resources Advisory Board.

ALBERT HERSHKOVITZ

Prior to being appointed a part-time Board Member representing labour in September, 1986, Mr. Hershkovitz served as business agent for the Fur, Leather, Shoe and Allied Workers' Union and the Amalgamated Meat Cutters and Butcher Workmen. He has been President of the Ontario Council-Canadian Food and Allied Workers, Vice-President of the Ontario Federation of Labour

and Chairman of the Metro Labour Council, Municipal Committee. As well as being Chairman of the Ontario Jewish Labour Committee and Vice-Chairman of the Urban Alliance for Race Relations, Mr. HersHKovitz has served as a member of the Board of Referees of the Unemployment Insurance Commission.

JOSEPH F. KENNEDY

Mr. Kennedy is the Business Manager of the International Union of Operating Engineers, Local 793, having served as Treasurer before becoming Business Manager. He has been instrumental in establishing a compulsory training program for hoisting engineers in the Province of Ontario. Mr. Kennedy is a Trustee for the Pension and Benefit Plans of Local 793, as well as a Trustee for the General Pension Plan of the International Union of Operating Engineers in Washington, D.C. He is a member of the National Safety Council, Chicago, Illinois, a member of the Construction Industry Advisory Board for the Province of Ontario, a Director of the Ontario Building Industry Development Board and, since May, 1983, he has been a part-time member of the Ontario Labour Relations Board representing labour.

HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that Union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario 1958-1962; Secretary Treasurer of the same council, 1962; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and member of the Advisory Council on Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

LOUIS LENKINSKI

In August of 1984, Mr. Lenkinski was appointed a part-time Board Member representing labour. A member of the Upholsterers' International Union for many years, he served as business representative of that union from 1958 to 1969. Since 1969, he has held the positions of Project Director and Executive Secretary to the Labour Council of Metropolitan Toronto. In 1975 he became Executive Assistant to the Ontario Federation of Labour. Mr. Lenkinski has frequently served as labour representative on arbitration and conciliation boards and has also represented parties in proceedings before the Labour Relations Board.

DONALD A. MACDONALD

Prior to being appointed a full-time Board Member representing management in July, 1986, Mr. MacDonald was active in personnel management at Brown & Root Ltd. from 1957 to 1968 and at Lummus Canada from 1968-1981. From 1981 until his appointment at the Board, Mr. MacDonald was President of the Boilermaker Contractors' Association where he was responsible for negotiations, contract administration and liaison with other trade associations. Other activities include Chairman of the Industrial Contractors Association National Committee and Director of the Electrical Power Systems Construction Association.

ROBERT D. McMURDO

Since April of 1984, Mr. McMurdo has served as a part-time Board Member representing management. An honours graduate in business administration (1953) from the University of Western Ontario, Mr. McMurdo has held many industry related offices including: President of the London

& District Construction Association, President of the Construction Safety Association of Ontario and President of the Ontario General Contractors Association. He is the President of McKay-Cocker Construction Limited and McKay-Cocker Structures Limited of London and is currently a member of the Ministry of Labour Construction Industry Advisory Board.

TERRY MEAGHER

Mr. Meagher was appointed a part-time Board Member representing labour in October, 1985. From 1970 to 1984, Mr. Meagher served as Secretary Treasurer of the Ontario Federation of Labour. Prior to that he has held the positions of Business Agent, Local 280 of the Beverage Dispensers and Bartenders Union and Executive Secretary to the Labour Council of Metropolitan Toronto. He has also served as Vice-Chairman of the Canadian Labour Congress, Human Rights Committee and member of the Canadian Labour Congress International Affairs Committee.

RENE R. MONTAGUE

In March of 1986 Mr. Montague was appointed a full-time Board Member representing labour. A member of the United Auto Workers for many years, Mr. Montague maintained many responsible positions in the union, including plant chairperson of Northern Telecom. He has extensive arbitration and bargaining experience. In 1985 Mr. Montague was elected to the Executive Committee of the United Way of Greater London and was a member of the Board of Directors and Campaign Committee of the United Way.

JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics as well as an M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second World War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies in several parts of the country. He was a vice-president of Labatt Brewing Company for several years before his retirement in January 1982.

PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britain and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of C.U.P.E. and presently holds the office of Ontario Regional Director of C.U.P.E., and is also a Vice-President of the Ontario Federation of Labour.

WILLIAM S. O'NEILL

In March, 1986 Mr. O'Neill was appointed a part-time Board Member representing management. Since 1969 Mr. O'Neill has held many responsible positions with Ontario Hydro, including Senior Construction Labour Relations Officer and Manager of Construction Labour Relations. He is a past Secretary-Treasurer of the Electrical Power Systems Construction Association and is currently its General Manager. He is also a director at large of the Construction Owners Council of Ontario.

DAVID A. PATTERSON

Mr. Patterson was appointed a full-time Board Member representing labour in April, 1986. A member of the United Steelworkers of America for many years, he served as President of Local Union 6500 and Director of District 6. He was elected Vice-President at large at the 1982 CLC convention and re-elected to that position in 1984. He has served as Chairman of the Safety and Health Convention Committee (CLC) as well as a member of the Board of Directors of the Mine Accident Prevention Association of Ontario.

HUGH PEACOCK

Mr. Peacock was appointed a full-time Board Member representing labour in November, 1986. Prior to joining the Board Mr. Peacock was Legislative Representative for the Ontario Federation of Labour which enabled him to gain broad knowledge of the legislative and political process in Ontario as well as its labour relations system. He came to the OFL after having been the Woodworkers' Education and Research Representative (1960-1961), worked in the UAW Canada Research Department (1962-1967), and been a negotiator for the Toronto Newspaper Guild (1972-1976). Mr. Peacock was a member of the Ontario Parliament, representing Windsor West (NDP) from 1967 to 1971. He is currently a member of various social and community organizations.

ROSS W. PIRRIE

Mr. Pirrie was appointed a part-time Board Member representing management in January, 1985. Having been employed by Canadian National Railways for ten years, in 1960 he joined Shell Canada Limited. At Shell Canada, Mr. Pirrie held a wide range of managerial positions in general management, occupational health, human resources and industrial relations before retiring in 1984. Mr. Pirrie holds the degree of B.A. (Psychology) from the University of Toronto.

JOHN REDSHAW

Mr. Redshaw was appointed a full-time Board Member representing labour in July, 1986. From 1966 to 1971 he served as business representative for Local 793, International Union of Operating Engineers. He was area supervisor for Hamilton, St. Catharines and Kitchener, a position which included organizing and negotiation of all collective agreements in the construction industry. From 1979 until his appointment to the Board Mr. Redshaw worked in the Union's Labour Relations Department, first in Toronto and then Cambridge. He has been Secretary-Treasurer of the Canadian Conference of Operating Engineers and Secretary of the Waterloo, Wellington, Dufferin, Grey, Building Trades Council.

KENNETH V. ROGERS

Mr. Rogers was appointed in August, 1984, as a part-time Board Member representing labour. From 1967-1976, he was a representative with the International Chemical Workers Union and served as Secretary-Treasurer of the Canadian Chemical Workers Union during 1976-1980. Since the Energy and Chemical Workers Union was founded in 1980, Mr. Rogers has been its Ontario Co-Ordinator. He is a former Vice-President of the Ontario Federation of Labour.

JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and an LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

JUDITH A. RUNDLE

Ms. Rundle was appointed a full-time Board Member representing management in July, 1986. She joined the Board with an impressive background in the personnel field. After the University of Toronto, Ms. Rundle held responsible personnel positions at Toronto General Hospital and National Trust Company. Ms. Rundle joined the Riverdale Hospital in 1979, first as Assistant to the Director of Personnel and subsequently as Assistant Administrator of Human Resources. From January 1986 until her arrival at the Board, Ms. Rundle was employed as Acting Director of Personnel and Labour Relations at Toronto General Hospital. She was active as management representative on boards of arbitration and has been a member of various management organizations.

JANIS SARRA

Ms. Sarra was appointed a full-time Board Member representing labour in July, 1986. She was Human Rights Director of the Ontario Federation of Labour. Ms. Sarra has an M.A. in political economy from the University of Toronto and has been an instructor in occupational health and safety for the Centre for Labour Studies, Humber College. From 1979 to 1984 she was a Research Associate, Labour Relations and Women's Equality for the NDP Caucus, Legislative Assembly. Ms. Sarra was Executive Assistant to a Toronto city alderman from 1976 to 1979 and was formerly a researcher, Health Advocacy Unit, City of Toronto. She has been an active member of OPSEU, CUPE and OPEIU, holding offices such as steward, chair health and safety committee and negotiating team.

GORDON O. SHAMANSKI

A graduate of the University of Chicago (B.A.), Mr. Shamanski was appointed a full-time Board Member representing management in July, 1986. He joined the Board with an impressive background in the personnel field, having been Personnel Manager at Rothmans of Pall Mall Canada Ltd., 1963-1970, and at Canadian Motor Industries Holdings Limited, 1970-1971. From 1972 to 1985 Mr. Shamanski was Corporate Director of Personnel and Industrial Relations at Domglas Inc. where he was responsible for labour contract negotiations, labour board hearings, compensation and benefits design, health and safety, management development and training, and staff recruitment. He has lectured in industrial relations and is a member of various management organizations.

ROBERT M. SLOAN

Prior to being appointed a full-time Board Member representing management in November, 1986, Mr. Sloan was employed by Alcan as Corporate Industrial Relations Manager and Occupational Health and Safety Co-ordinator. In this capacity Mr. Sloan, a graduate of Sir George Williams University (B.A.) was directly involved in all phases of the personnel and labour relations scene including representation in various management organizations.

INGE M. STAMP

Appointed a full-time Board Member representing management in August, 1982, Ms. Stamp comes to the Board with many years of experience in the personnel and labour relations field at Bechtel Canada Limited. Having joined that firm as Senior Secretary to the Vice-President of Labour Relations in 1969, Ms. Stamp became Administrative Assistant in 1974 and Labour Relations Assistant in 1975. In 1977 she was appointed labour relations representative, a post she held prior to her appointment to the Board. In this capacity, Ms. Stamp was appointed, by the Industrial Contractors Association of Canada, as a member of several employer bargaining agencies designated to negotiate collective agreements on behalf of management. Ms. Stamp has been very active in the functions of the Industrial Contractors Association of Canada and since 1979 has served as treasurer responsible for the General Funds and the Ontario Industry Funds.

MALCOLM STOCKTON

Mr. Stockton was appointed a part-time Board Member representing management in October, 1985. He earned a law degree from Osgoode Hall Law School in 1973 and was called to the Ontario Bar in 1975. Since then he has engaged in the practice of law in Niagara Falls, Ontario. He has served as a fact-finder, mediator, and arbitrator for the Education Relations Commission since 1976.

ROBERT J. SWENOR

Mr. Swenor was appointed as a part-time Board Member in February, 1982, to represent management. Mr. Swenor, who holds the degrees of B.A. and M.B.A. from McMaster University and a certificate in Metallurgy of Iron and Steel, has been employed with Dofasco Inc., Hamilton since 1970 and is presently its Vice-President, Personnel. He is a member of CMA's National and Provincial Industrial Relations Committees and the Ontario Chamber of Commerce Employer/Employee Relations Committee.

E.G. (TED) THEOBALD

Mr. Theobald was appointed as a part-time Board Member representing labour in December, 1982. From 1976 to June, 1982, he was an elected member of the Board of Directors of O.P.S.E.U., and during this period served a term as Vice-President. A long time political and union activist, Mr. Theobald has served as President and Chief Steward of a 600 member local union. He has served on numerous union committees and has either drafted or directly contributed to several labour relations related reports. He is experienced in grievance procedure and arbitration.

W.H. (BILL) WIGHTMAN

Mr. Wightman was first appointed to the Board in 1968, becoming a full-time member in 1977, and resigned from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently, he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canada Manpower and Immigration Council, the Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He was a founding member of the McMaster Medical

Centre Advisory Council on Occupational Health and Safety. He is a graduate of Clarkson College (BBA '50) and Columbia University (MS '54) where he lectured while engaged in doctoral studies.

JAMES P. WILSON

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. Prior to joining the Board he served as the Labour Relations Consultant to the Electrical Contractors Association of Ontario for 10 years. Mr. Wilson has served as the President of the Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management.

NORMAN A. WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of the Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.

ROGER WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in August, 1984. Mr. Wilson has had a long association with the United Steelworkers of America, becoming the first Vice-President of Local 14863 in 1974 and its President in 1978. Since 1982, he has held the position of Chief Steward of Local 8562 of the Steelworkers. He is presently Reeve of the Township of Hope and a member of Northumberland County Council.

DANIEL WOZNIAK

Mr. Wozniak was appointed a part-time Board Member representing management in March, 1987. A graduate of the University of Manitoba (B.A.) and the Manitoba Law School (LL.B.), Mr. Wozniak has held various personnel-related positions. He started his business career with DuPont of Canada Ltd. where he held various positions in the employee relations department. In 1960, he joined Standard Brands Limited (now known as Nabisco Brands Ltd.) in Montreal and was promoted to the position of Vice-President, Personnel and Industrial Relations. In 1976 he joined Canada Wire and Cable Ltd. in Toronto where he held the position of Vice-President, Personnel and Industrial Relations until his retirement in 1987. A member of various management organizations, Mr. Wozniak served as the Deputy Employer's representative to the 72nd ILO Convention in Geneva (1986).

V HIGHLIGHTS OF BOARD DECISIONS

No breach of duty of fair representation by union even though union representing both groups whose interests were at stake

This case involved a complaint alleging the violation of the duty of fair representation, section 68, and an application pursuant to section 63, the sale provision, of the *Labour Relations Act* as a result of the purchase by the respondent Great Atlantic and Pacific Tea Company Limited (A & P) of the “warehouse operation” of the intervener Dominion Stores. Although it was not disputed that the transaction by which A & P acquired the warehouse constituted a “sale” within the meaning of section 63 of the Act, the parties nonetheless disagreed as to the legal impact of that transaction on the Dominion warehouse employees. Although initially A & P did not wish to integrate the Dominion warehouse operation, in the end it agreed that the company would purchase the warehouse, including the trucking fleet, on the basis that the operations would be integrated with the A & P warehouses under the A & P collective agreement. The Canadian Director of the union was convinced that unless the union accepted the company’s proposal for integration, A & P would either not purchase the warehouse operation at all or would acquire, but close, the facilities for an indefinite period. He felt that accepting the A & P offer on integration was the only means to preserve approximately 250 jobs of the Dominion employees in question. The union called a meeting of the Dominion warehouse bargaining unit wherein the A & P proposal was outlined to the workers. Following the presentation, there was an open question period wherein workers were free to express their views on the subject of the proposal put forward. As counsel had given a legal opinion that a vote was not required in the circumstances, the Canadian Director decided against holding a vote for fear that “in the heat of the meeting, the proposition would be turned down”. As a result, a number of employees proceeded with the complaint to the Board that the union had contravened its duty of fair representation by agreeing to the endtailing of Dominion’s seniority list.

The complainants submitted that the memorandum of agreement contravened section 63 of the Act insofar as a successor employer is bound by the collective agreement in force with respect to the vendor’s business until the Board declares otherwise. It was not open to the parties themselves to terminate the collective agreement. As it was not disputed that the transaction between Dominion and A & P constituted a sale within the meaning of section 63, the issue to be determined was whether the memorandum of agreement precluded or avoided the legislative consequences of the sale. The Board held that while section 63 creates some permanence to bargaining rights regardless of changes in ownership, it does not preserve the context in which the collective agreement existed prior to the sale. It was noted that the Board would not lightly interfere with a party’s resolution of such matters. The Board felt that what had transpired in the instant case was the purported alteration, on agreement of A & P and the union, of the scope provision in the A & P collective agreement so as to include within the bargaining unit the warehouse facilities purchased from Dominion. The Board affirmed the right of parties to a collective bargaining relationship to alter or amend their collective agreement on consent. As a collective agreement is the parties’ own document, parties must therefore be free to amend that document to respond to changing circumstances. The Board held that there was nothing contrary to the Act in the parties arrangement up to the point of the expiry date of the Dominion collective agreement. The arrangement had the legal result of rewriting the Dominion collective agreement

so as to replicate the A & P contract. As it was not disputed that intermingling of employees had occurred, the Board thereby exercised its authority pursuant to section 63(6) to declare that A & P was no longer bound by the Dominion collective agreement. Rather, the A & P collective agreement was binding on the warehouse employees, including the “former” Dominion employees.

With respect to the section 68 complaint, the Board noted that there were unique aspects to this case insofar as the same local of the same union had held bargaining rights for both groups of employees for a considerable length of time. The Board held that the allegation that the union faced a conflict of interest insofar as it represented both the A & P and Dominion bargaining units was unfounded. Section 68 clearly requires a union in these circumstances to put its mind to the issues, including the bona fides of the offer in question. In the circumstances of this case, the Board was satisfied that such appropriate consideration was given. It was noted that the union need not be “correct” in its assessment in order to fulfill the duty of fair representation. The union’s conclusion that the A & P offer represented the only means of saving the jobs was not unreasonable and did not violate section 68. Another element of section 68 to be considered was a review of the process culminating in the acceptance of the A & P proposal. The Board noted that a union must be given considerable latitude in setting strategies in making decisions to best advance the interest of the employees. On the facts of this case, the Board felt that the meeting organized by the union permitted full discussion and attempted to answer questions. The union was not required to hold a vote in these circumstances. Thus, the Board did not find a contravention of section 68 in the manner in which the union had “negotiated” with A & P with respect to the proposal. Further, although not relevant, the Board noted that the A & P collective agreement could not be characterized as inferior to the Dominion agreement. The bargain struck between the parties was recognized as a delicate balance of trade offs and the Board commented that it should accord a bargaining agent considerable latitude in balancing the various competing interests at stake.

On the facts of this case the Board held that the union reached its determination by considering the relevant factors from the viewpoint of the Dominion employees and concluding that the A & P proposal represented the “best possible deal”. The Board noted that such an assessment was eminently reasonable and not contrary to section 68. Thus, although the Board commented that it could sympathize with the emotional response of the Dominion employees to the events surrounding the sale, nonetheless the union had represented their interest as well as could be expected in the difficult circumstances. The representation clearly satisfied the duty imposed by section 68 of the Act. The Board further declared that A & P was not bound by the Dominion collective agreement as of September 1985 or, in the alternative, as of the date of sale. The A & P collective agreement was to be binding on the warehouse employees, including the Dominion employees covered by the A & P scope clause. *Great Atlantic and Pacific Tea Company Limited*, [1986] OLRB Rep. Apr. 485.

Sale of a business remedies only to be invoked where there is *de facto* overlap or merger of bargaining units rendering preservation of bargaining rights in the “like unit” difficult

A section 63 application relating to a retail food store in Chatham, Ontario was brought before the Board. For many years the applicants, U.F.C.W. Locals 175 and 633, had represented employees working in A & P’s retail food stores across Ontario. A province-wide, multi-store collective agreement regulated the terms and conditions of employment for these employees. In the spring of 1985, A & P purchased 92 retail food stores from Dominion Stores Limited. One of the newly purchased retail food stores was the Chatham, Ontario location where the employees were already represented by Local 206 of the United Food & Commercial Workers International Union. On January 26, 1986 at this location, all “Dominion” signs and logos were removed from

the premises and equipment, and replaced with A & P signs and logos. Thus, for all intents and purposes, the Chatham New Dominion Store had in fact become an A & P store with all employer responsibilities with respect to payment, unemployment insurance, income tax deductions, workers' compensation, etc. to be undertaken by A & P. In fact, it was anticipated that as of February 23, 1986, New Dominion would no longer exist as an independent corporate entity, but rather would become "The New Dominion Stores Division" of A & P.

The applicants asserted that A & P had become a "successor employer" within the meaning of section 63 of the *Labour Relations Act* and had thereby assumed the collective bargaining obligations of New Dominion. The problem arose, however, in that if A & P was bound by the collective agreement between New Dominion and Local 206, the terms of that agreement were in conflict with its own province-wide collective agreement. The conflict was underlined by the fact that there was already an A & P store in Chatham, where the employees were covered by the provincial agreement. The applicants further submitted that there had been an "intermingling" of employees, thereby triggering the remedial responses enumerated in section 63(6) of the Act. In the respondent's submission, however, it was argued that there had been no intermingling and the purpose of section 3 was to preserve not extend bargaining rights.

The Board held that there had been a "transfer of business" within the meaning of section 63 of the Act, thereby rendering A & P the successor to New Dominion with respect to the collective bargaining obligations formerly existing between Local 206 and New Dominion. With respect to the intermingling argument, however, the Board had difficulty accepting the applicant's assertion that the bargaining rights of Local 206 should be terminated or a representation vote directed. It was noted that the purpose of section 63 of the Act is to preserve a union's bargaining rights and the employees' collective agreement upon the transfer of a business from one employer to another. Though the Board was not persuaded that the applicants had established an intermingling of employees, it went on to comment that even if it found a token intermingling which could technically trigger the remedies contemplated by section 63(6), there was no reason on the facts of this case to invoke such remedies. It was noted that section 63(6) is directed to situations in which there is a *de facto* overlap or merger of bargaining units such that it is difficult to preserve bargaining rights in the "like unit" without creating operational problems for the successor employer or prejudicing the established rights of the employees. This mischief was not present on the facts of this case insofar as the former New Dominion Store in Chatham was easily defined and the employee complement represented by Local 206 had not, in fact, been altered by transfers out of that bargaining unit, or by the introduction of new employees who may have had different union allegiances. The Board felt there was no reason at this stage to "put the bargaining rights of Local 206 to the test of a representation vote". Thus, the Board was not prepared to declare that A & P was no longer bound by the Local 206 agreement, nor was it prepared to exercise its remedial discretion under section 63(6) to direct that a representation vote be taken. In order to resolve the apparent conflict between the two collective agreements to which A & P had become bound, however, the Board held that the provincial collective agreement should be amended so as to preclude its application to the former New Dominion Store where Local 206 had bargaining rights, and likewise to amend the current Local 206 agreement to make it clear that it would not apply to other existing stores or those which may open in the Chatham-Wallaceburg area. The Board thus preserved but confined the rights of Local 206 to the store where it had bargaining rights prior to the transaction in question. *New Dominion Stores Inc.*, [1986] OLRB Rep. Apr. 519.

Offering grievors alternate positions on the condition that grievances are withdrawn does not constitute an unfair labour practice

The Board considered a complaint filed under section 89 of the *Labour Relations Act* alleging that two grievors had been dealt with by their employer contrary to the provisions of sections 66

and 70 of the Act by requiring the employees in question to withdraw grievances against the employer as a condition of accepting jobs which the employer was obligated to offer them pursuant to the collective agreement. In order to determine whether the employer had contravened the Act, the Board held that it must first decide whether the grievors had a right under the Act to have their grievances properly processed by the union under the grievance and arbitration provisions of the collective agreement. It must then be determined whether the employer had interfered with that right in a manner which contravened the Act. The Board noted that an activity does not have to be expressly covered by any one section of the Act in order to be found to be a right protected by the Act's substantive provisions. As section 44(2) of the Act mandates that an agreement provide for the settlement of differences between parties respecting the interpretation, application, administration or alleged violation of the agreement or be deemed to include such a provision, then the right to have the procedures followed must be a right under the Act. Thus it remained for the Board to determine whether the employer had violated sections 66 and 70 of the Act by requiring the two employees in question to withdraw their grievances as a condition of accepting the employer's offers of the junior planner jobs, i.e. in making acceptance of its job offers to the employees conditional upon them dropping their grievance, was the employer seeking by threat of dismissal or other penalty to compel the employees to cease exercising rights under the Act contrary to section 66(c) or seeking by intimidation or coercion to compel them to refrain from exercising rights under the Act contrary to section 70?

The Board held that as a matter of theory, any compromise settlement of an employee's grievance made conditional upon withdrawal of the grievance may come within the definition of an unfair labour practice insofar as such a settlement could be characterized as a successful attempt by the employer to compel a grievor or his union, by threat of pecuniary or other penalty, to waive or cease exercising a right available under the Act. On the other hand, it was noted that a grievor may waive his or her right to have full enforcement of literal rights under the collective agreement. In fact, as the purpose of the grievance procedure itself as mandated by the *Labour Relations Act* is to bring about settlement of disputes, arguably it would be counter-productive to place a party responding to a grievance at risk of being found in violation of the Act for making withdrawal of a grievance a condition of a settlement offer. Thus, although the Board acknowledged that there may be particular circumstances where causing an employee to choose between retaining employment and exercising his rights to have the collective agreement enforced could constitute a violation of the Act, this was held not to be such a case. Rather, on the facts of this case, the union and the employer had an honest disagreement over the scope of the employer's obligation under the redundancy provisions of the collective agreement. In the process of attempting to resolve their differences, the Board felt that the employer had "played hardball" with the union, but nothing more. Thus, although an arbitrator may have found that the employer had violated the collective agreement in its dealings with the two employees in question, the Board could not find that the employer's conduct constituted a violation of sections 66 or 70 of the *Labour Relations Act*. *The Corporation of the City of Ottawa*, [1986] OLRB Rep. Apr. 533.

Failure to proceed to arbitration despite unanimous membership vote to do so not breach of fair representation duty

This was a complaint under section 89 of the Act alleging a contravention of the duty of fair representation, section 68, for the union's failure to take a grievance to arbitration despite a unanimous membership vote to do so. It is well established that the test in duty of fair representation cases is not whether the union made the "right" decision, but whether the union acted reasonably in the circumstances. A union can decide to subordinate an individual interest to the collective interest so long as it does not act in an arbitrary or discriminatory way or in bad faith in so doing. Legitimate factors for the union to consider in making its decision are the likelihood of

winning the grievance, the cost of taking the grievance to arbitration, the relative cost in light of resources available to the union and the interest of other members of the union. The Board held that these factors were all properly taken into account by the union representative in deciding not to take the complainant's grievance to arbitration. It was noted that the resources of the local were in dire straits, and the money required to fund an arbitration was not readily available.

In discussing the elements of the section 68 complaint, the Board noted that it is not necessary to establish hostility underlying "discriminatory" treatment to bring it within section 68. The inclusion of "good faith" as a separate head under section 68 encompasses notions of ill-will or hostility. It was further noted that access to the discrimination head of section 68 is not limited to those who can point to a traditional basis (such as race, sex or religion) for the different treatment, but rather is available to any employee who believes he or she has been subject to differential treatment. The Board noted, however, that different treatment in itself will not guarantee a complainant's success. Once an employee has established a *prima facie* case of differential treatment, it becomes incumbent upon the union to explain that treatment and to show that it was based on non-discriminatory factors. The Board held that the complainant did not establish that the union had represented him unfairly by discriminating against him on the basis of his health problems. Likewise, the Board held that the complainant's allegations did not encompass any suggestion that the union had acted in bad faith. The Board held that the union had decided not to take the complainant's grievance to arbitration because the results of an earlier group grievance indicated that the complainant's grievance was not likely to be successful, and further, because of the union's difficult financial condition. The Board held that it would be unreasonable to find the vote taken at the membership meeting to pursue the grievance to be binding on the union since it had been taken before the members were aware that the issue had been lost at an earlier arbitration. As the union had acted reasonably, the complaint was dismissed. *Mike Brinovec*, [1986] OLRB Rep. May 585.

Trade union status established despite fact that steps for formation of union not taken at a single meeting but at separate meetings on different dates

The issue in this case was the status of a trade union within the meaning of section 1(1)(p) of the *Labour Relations Act*. The respondent argued that the applicant did not have status as a "trade union" on three grounds. The first of these was that the applicant did not take the proper steps, in the proper order, in drafting and adopting the constitution, having the employees become members in the applicant "union", and subsequently adopting and ratifying the constitution. The Board, however, found that when the events in question were taken together in context, the applicant could be said to satisfy the test normally invoked by the Board. The applicant was formed during a meeting at which time a constitution and regulations were adopted. Although employees did not join and become members at that same meeting, in meetings throughout the province in the two-month period following this date employees were presented with the constitution, and after becoming members of the applicant, thereupon approved the constitution. An interim executive, elected at the initial formation meeting, remained in office throughout this period. Subsequently, an executive duly elected by the members replaced the interim executive. Looking at these activities and meetings, the Board was satisfied that the applicant had taken the necessary and proper steps to acquire status as a trade union within the meaning of the Act. The Board stated that it was not fatal that these steps had not taken place at one meeting attended by all members, but rather had occurred in separate meetings on separate dates. A constitution was drafted and subsequently placed before several meetings of employees for approval where it was approved and employees attending such meetings were subsequently admitted to membership. Subsequent to these steps, officers were elected pursuant to those constitutional provisions.

The Board noted that even if it was incorrect in its view that the applicant had followed the proper steps, in any event by the time of the election of the new executive, any deficiencies had been corrected. At the first general congress, attended by members from throughout the province, a new constitution was placed before the membership, was subsequently adopted and ratified and elections were held to elect a new executive. The Board held that where the initial steps taken by an organization are faulty in some respect, it is open to the organization to correct any such deficiencies in subsequent proceedings. It was noted that if it were otherwise, then an organization which inadvertently omitted or wrongly performed a given step in the procedure would “forever be precluded from correcting their mistake” and forever precluded from becoming a “trade union”.

The respondent’s second argument against the trade union status of the applicant, concerning the alleged discriminatory and offensive nature of certain provisions in the constitution, was dismissed. The Board will not deny an organization status as a trade union only because provisions of the constitution might be discriminatory. The Board must just be satisfied that such provisions do not affect whether the organization is a viable entity for purposes of collective bargaining, and, in this case, they did not. The final argument raised by the respondent was that the applicant would not be a viable entity for purposes of collective bargaining by virtue of its lack of presence in Ontario and its inability to properly serve its members therein. The Board stated that while the applicant did not currently have a physical office in the Province, nonetheless, it had established that it had a permanent office in Hull, Quebec, immediately across the river from where the respondent’s place of business was located. It was also noted that the applicant had conducted business for many years throughout the Province of Quebec, and clearly had a viable presence throughout that Province. Taking these factors together, the Board stated that it could not be maintained that the applicant did not have a viable presence within this Province. Thus, in all the circumstances, the Board found that the applicant had established trade union status within the meaning of section 1(1)(p) of the *Labour Relations Act*. *Dustbane Enterprises Limited*, [1986] OLRB Rep. May 607.

Related employer provisions of the Act not infringing freedom of association guaranteed by *Canadian Charter of Rights and Freedoms*

During the course of hearings in this matter, a preliminary objection was raised regarding the jurisdiction of the Board to deal with a request for an order under section 1(4) of the Act. The respondent argued that the related employer provisions of the Act infringed the guarantee of freedom of association provided in section 2(d) of the *Canadian Charter of Rights and Freedoms*. It was argued that as this infringement cannot be justified under section 1 of the Charter as a reasonable limit in a free and democratic society, section 1(4) of the Act must be declared unconstitutional and of no force and effect.

While noting its obligation to deal with and determine a constitutional issue which is being raised before it, the Board nonetheless held that on the facts of this case, in the absence of proper notice to the Attorney General, it was without jurisdiction to adjudicate upon the constitutional validity of the related employer provisions on the basis of section 35 of the *Judicature Act*, R.S.O. 1980, c. 223. The Board stated that the fact that the respondent had subsequently given notice to the Attorney General as required by section 35 of the *Judicature Act* was irrelevant insofar as at the time the constitutional validity of section 1(4) was called into question, the Board was without jurisdiction to adjudicate upon its constitutional validity. Further, the Board held that the respondents did not have standing to raise the constitutional validity of section 1(4) of the Act insofar as they were not asserting that the section interfered with their constitutionally protected rights, but rather with the constitutionally protected rights of others. The Board relied on previous jurisprudence wherein the courts have shown a reluctance to permit an employer to invoke on behalf of

other persons, and in particular, on behalf of the employees, rights which did not belong to the employer but did belong to other persons.

On the chance that the Board was wrong on either issue, it proceeded to deal with the challenge on its merits. It was noted that the purpose of section 1(4) of the *Labour Relations Act* is to preserve the bargaining rights of the trade union and thereby to protect the decision of the majority of employees to be represented by a trade union. Without such protection, an employee's choice to be represented by a specific trade union would be undermined by an employer's decision to create subsequent non-union companies and to perform part or all of its business activities, previously carried out by the unionized company, through the non-union company. It was noted that section 1(4) is part of an overall scheme of the Act including certification, termination and unfair labour practice provisions to guarantee employees the right to bargain collectively with their employer through a certified trade union of their choice, and further to protect this right from the conduct of an employer which either incidentally or intentionally destroys the collective bargaining rights acquired pursuant to the Act. The Board stated that in its view, section 1(4) does not interfere with the right of employees to select a bargaining agent when a majority of employees so desire but rather, preservesthat right and thus cannot be said to contravene section 2(d) of the Charter. Thus, the respondent's objections to the constitutionality of section 1(4) were denied by the Board. The Board then went on to find that the criteria set forth in section 1(4) had been satisfied in the circumstances although, on the evidence before it, the Board was not prepared to find that there had been a sale of business within the meaning of section 63 of the *Labour Relations Act*. *F. D. V. Construction Limited*, [1986] OLRB Rep. May 617.

Maintenance department electricians not constituting an appropriate bargaining unit in the mining industry

In this application for certification, the I.B.E.W. sought to represent a bargaining unit composed of 106 electricians working in the company's maintenance department. The union claimed that this unit was appropriate based on the assertion that the electricians were a separate and distinct group of employees with a unique community of interest and that, as such, should constitute an appropriate bargaining unit under section 6(1). In a prior decision the Board had ruled against the union's second argument that the electricians formed a "craft unit" which is deemed appropriate under section 6(3) of the Act. In this decision the Board dealt primarily with the union's assertions that the electricians in the maintenance department formed an appropriate bargaining unit.

In reviewing the Board's approach to making bargaining unit determinations, the Board reiterated its concern about the possible fragmentation and division of the employee complement into a number of potentially competing collective bargaining units represented by different unions and stated that "[f]or anyone concerned about promoting collective bargaining stability and minimizing competitive bargaining, inter-union rivalry, jurisdictional disputes, and industrial conflicts, a possibility of a multiplicity of bargaining units is not one to be welcomed." The Board also referred to its traditional reluctance to define bargaining units on the basis of employee classifications or employer departments because of the high potential for fragmented bargaining which such practices create. Having reviewed the evidence the Board concluded that there was no doubt that the electricians, as a group, had certain skills and performed certain work which was different from that of other employees or other skilled tradesmen. The Board found, however, that these facts did not make the electricians unique nor did it mean that they shared a separate community of interest for collective bargaining purposes or that, from a collective bargaining perspective, they would be a separate "appropriate" bargaining unit. Indeed the Board found that the most striking feature of the electrician's employment was the *absence* of employment characteristics unique to electricians which would have supported their claim for a separate bargaining

unit. Electricians shared the same wage progression system, the same source of work and a similar wage rate to the other skilled tradesmen involved in maintenance and were co-ordinated by the same supervisory staff. The Board stated that “[t]he work of various of trade groups cannot be divided into watertight compartments”, and since it had found that the electricians shared the same work situation and job conditions of most of the other employees, the union’s application for a single unit of electricians was denied.

The Board also dealt with the applicant’s *Charter* argument which asserted that the electricians constitute a coherent grouping of employees whose right to engage in collective bargaining should not be limited by the Board’s policy prescriptions or definitions of the “appropriate” bargaining unit. The union asserted that the constitutional right of freedom of association was violated by the requirement that electricians seek trade union representation only in a broader-based bargaining unit instead of a group of their own choosing. The Board termed the union’s argument as “Charter gloss” which involved a fundamental challenge to the Legislature’s right to regulate the structure of collective bargaining and the Board’s ability to shape bargaining units in such a way as will promote orderly, stable and harmonious collective bargaining relationships. The Board ruled that “it was by no means clear that ‘freedom of association’ entails the protection of collective bargaining rights, let alone entitlement to any particular bargaining unit or trade union representative.” After having reviewed both Court and Labour Board rulings on the protections afforded by s. 2(d) of the *Charter*, the Board commented that even the more expansive views of the scope of freedom of association do not address the right of individual groups of employees to engage in collective bargaining in a bargaining unit of their own choosing apart from other employees of the same company. Moreover the Board found that it was clear that limits on employee access to certification do not necessarily violate the *Charter*.

For the purpose of this decision, however, the Board was prepared to *assume* that, to some extent, section 6(1) did impinge on employees’ freedom of association. The Board reasoned that any bargaining unit or voting constituency not based on total employee unanimity will almost certainly include some workers who do not wish to associate for collective bargaining purposes with others, or at all, and the unit definition may well exclude some individuals who would prefer to be included. It does not matter where the Board draws the line. Some employees are always going to be included or excluded against their wishes; and, if one equates the freedom of association with the right to bargain collectively (or not) in a group of one’s own choosing, there would almost never be a bargaining unit determination which did not infringe upon someone’s freedom of association. Further, the Board reasoned, a dissatisfied group might also have the right to *dissociate* and form its own collective bargaining unit. In face of this likely infringement on someone’s freedom of association the question for the Board was whether the Board’s determination of the “appropriate” bargaining unit can be regarded as a reasonable limit on freedom of association demonstrably justifiable in a free and democratic society. The Board was satisfied that “[t]he Act promotes and protects collective bargaining rights which did not exist at common law, and may not have any independent constitutional protection. To the extent that the regulatory framework also limits the employees’ freedom of association, it is our opinion that such limitation is reasonable, and from the Board’s experience and collective bargaining perspective, demonstrably justifiable”. The *Charter* therefore did not preclude the Board from determining that the unit sought by the I.B.E.W. was not appropriate for collective bargaining and therefore dismissing the application. *Kidd Creek Mines Ltd.*, [1986] OLRB Rep. June 736.

Discharge not appropriate penalty where refusing employee relies on mistaken advice of health and safety representatives

The complainant who had a long record of disciplinary problems complained under section 24 of the *Occupational Health and Safety Act* that he was improperly fired for refusing to work with an

unsafe weed-eater. The complainant refused to use the sling-held weed-eater after he sustained a minor burn to his arm on June 13, expressing concern that he would burn himself or perhaps others on its exhaust. Parenthetically the Board noted that the complainant was not fully trained on the machine and on the day in question was not wearing the work clothes prescribed by the City. The first refusal to use a weed-eater occurred on July 26, 1984. At this time an inspector from the Ministry of Labour was called to investigate the complaint and concluded that the muffler did become excessively hot and ordered that the workers be protected by appropriate apparel or in the alternative that heat shields be installed on the machines. The City's response was to provide workers with protective welders' sleeves. The complainant, however, misapprehended the inspector's ruling and insisted on the installation of heat guards. On August 7, 1984 the complainant again refused to use the weed-eater and refused to wear the welders' sleeve because it was restrictive and uncomfortable. The City assigned him other work and a second Ministry investigator was summoned. Having reviewed the prior order, the second investigator advised that the steps taken by the City were satisfactory, and the Board noted that the City for its part continued throughout the day on August 7 to try and allay the concerns expressed by the complainant. On August 15, 1984 the complainant again refused to use a weed-eater. However, on this occasion there was no alternative work available. When contacted, the Ministry of Labour inspectors refused to attend to perform yet another inspection on a situation that they had already reviewed. The complainant sought advice with regards to his refusal to work from his health and safety representative who advised him that he could continue to refuse to work if he felt the work was unsafe. A second union health and safety representative who knew that the proper test for further refusal was "reasonable grounds" also advised the complainant that he could continue his refusal to work. In evidence it became apparent that he had misapprehended the original Ministry order to have required that heat guards be installed on the mufflers. The complainant's refusals continued for the next three working days and on August 20 the complainant was fired.

The Board noted that the complainant continued to insist that the only way to guard the muffler was by a heat shield. The Board stated that the basis upon which an employee is entitled under the Act to refuse to perform an assigned task is initially that the employee has "reason to believe" that the work is unsafe. These words establish a test that is *subjective* in nature. After management has taken steps to investigate and remedy the situation, however, the requirement for continued refusal becomes "reasonable grounds". This term provides for an *objective* test.

With regards to the function of the Director of Appeals, the Board stated that on appeal the Director is asked to decide whether the original inspector was right or wrong in terms of whether the machine, device, thing, workplace or part thereof is likely to endanger. He does not decide whether the refusing employee has reasonable grounds for his refusal. With regards to the employee's assertion that the welders sleeves provided for his protection were uncomfortable, the Board stated that "comfort" did not appear to be a basis for invoking the refusal to work provision of the Act. Nor could the complainant rely on his own misreading of the first inspector's report to establish reasonable grounds for continued refusal. The test is, as noted, an objective one and the order of the first inspector clearly gave the City the option of providing a guard on the muffler *or* providing adequate safety apparel. The Board therefore ruled that there were no reasonable grounds for continued refusal on the part of the complainant to use the weed-eater, at least not after the issuance of the second inspector's report. The refusal to work was therefore not in compliance with the Act and the complainant was legitimately liable to disciplinary action by the City.

The issue before the Board then became whether or not, in the light of a lengthy record of disciplinary problems, a discharge was appropriate. The Board stated that the City, which had correctly assessed the risk level in the workplace and had made every reasonable effort to satisfy the complainant, ought not to carry the burden of the complainant's loss of pay. Further, the

Board ruled that should it find that an employee had abused the *Occupational Health and Safety Act* in an effort to frustrate or “tie up” superiors, any thought of mitigation of the penalty would be out of the question.

The Board, however, noted that this complainant did not act completely on his own, but had been advised by two different health and safety representatives who did not share his defiant attitude toward his employers. Both health and safety representatives had advised him that he was within his rights to continue to refuse to work based on their misapprehension of the original inspector's order. The Board found that the complainant's misapprehension of his legal position under the Act was fostered at least in part by the advice of individuals on whom it was not unreasonable for him to have relied and that this fact did lessen the severity of the complainant's insubordination and the extent to which the Board could conclude that management's authority was being wilfully undermined with regards to the mitigation of penalty. The Board was also influenced by the fact that on the occasion of his last refusal the complainant was not aware that it would result in his immediate termination. In the past he had always been provided with alternative work even when the City considered his complaints unjustified. In conclusion, the Board ruled that even an employee as unsatisfactory and obdurate as the complainant is entitled to a clearer opportunity to make “a last chance” judgment about continuing his employment. Accordingly, the complainant was reinstated without loss of seniority or service credit but without compensation for lost pay. *The Corporation of the City of Ottawa*, [1986] OLRB Rep. June 798.

Food store chain changing to franchise operation not a change in the character of business sufficient to cause Board to terminate existing bargaining rights

RPKC Holding Corporation (“RPKC”) holds a franchise to a Mr. Grocer store from Willett Foods Limited, a wholly owned subsidiary of Dominion Stores Limited. RPKC requested that the Board terminate bargaining rights held by the Retail, Wholesale and Department Store Union pursuant to section 63 of the Act, alleging that there had been a change in the character of the business so as to make it substantially different from the business of Dominion. The Union applied under section 1(4) of the Act, alleging that associated or related activities or businesses were being carried out under common control or direction by Dominion, RPKC, and Willett Foods Limited c.o.b. as Mr. Grocer. The Union also alleged that it had been dealt with by the respondents contrary to the provisions of sections 50, 64, 66, and 67 of the Act.

In the preliminary ruling the Board stated that delay on the part of the union in filing its complaints had not resulted in prejudice to the respondents that the Board could not, if necessary, address in any remedial response it found necessary to make. The Board ruled that section 89(5) of the *Labour Relations Act* did not offend section 11(d) of the *Charter* and in that respect followed the *Third Dimension Manufacturing Limited*, [1983] OLRB Rep. Feb. 261. The Board stated that even if the union's section 89 complaints succeeded, the Board could only award remedial and compensatory relief; Board had no jurisdiction to impose punitive sanctions under section 89. The Board found it unnecessary to deal with the respondent's further *Charter* argument that section 89(5) also offended section 15(1) of the *Charter*.

In reviewing the evidence before it, the Board found that by 1982 it had become apparent to Dominion management that profits and productivity were being eroded, and that generally many of the Dominion Stores were smaller, less contemporary and less efficient than those of their major competitors. In an effort to make Dominion less vulnerable to market conditions, Dominion management conceived of a franchising and wholesaling scheme to be run through Willett. Dominion therefore took steps to close a number of its own stores and begin a franchising operation in which Willett would distribute and manage a string of Mr. Grocer stores. Dominion management was at this time of the view that they would be unable to make a success of the Mr.

Grocer franchise program under the existing collective agreement. However, the union insisted that it would not be drawn into dealing with the company on a store by store basis, and, although discussions were held, the parties were unable to reach an accord. The Board found that thereafter decertification of some if not all of the stores became a part of the Mr. Grocer "game plan".

Mr. R. Ferencz, a former Dominion store manager, negotiated a Mr. Grocer franchise and sublease agreement with Willett which he entered through the corporate vehicle of RPKC Holdings Limited of which he was the president and majority shareholder. Because the RPKC franchise agreement was the first to be signed, it came to be used as a precedent for subsequent franchise agreements executed by Willett. The Board found that Mr. Ferencz was aware at all material times that RPKC was bound by the collective agreement then in place between the union and the respondent and obligated to honour it. However, he chose to entirely disregard its provisions, particularly with regards to the staffing of his Mr. Grocer outlet. Neither Dominion nor Willett took any steps to direct or encourage the franchisee to recall or hire laid off Dominion employees and Mr. Ferencz hired whomever he wished to staff his store. RPKC did deduct union dues from employees wages but instead of forwarding them to the union as per the agreement, it deposited them instead in a trust account. While some former Dominion employees were hired, no recognition was given to seniority acquired through previous employment with Dominion. No payments were made on behalf of employees to the pension plan as provided in the collective agreement nor did RPKC adhere to contractual obligations regarding a Christmas bonus.

RPKC conceded that there had been a sale of business by Dominion (through Willett) to RPKC but contended that it had changed the character of the business such that it was substantially different from the business of Dominion, the predecessor employer, and accordingly asked the Board to terminate the union's bargaining rights.

The Board was of the opinion that the changes affected by RPKC did not render its business substantially different from that conducted by the predecessor employer. Although the Mr. Grocer outlet had been remodelled, so that it was now selling food and other items to the public under the Mr. Grocer trademark rather than that of Dominion, it remained a retail foodstore in which cashier clerks, meat cutters, department managers and other employees use the same skills to perform essentially the same tasks that were performed by the persons previously employed by Dominion at that store. The Board ruled that the change from being one store in a chain of retail food stores to being one in a number of franchised retail food stores over which the franchisee is empowered to, and in fact does, exert a substantial degree of direction and control is not a change in the character of the business such that it is substantially different from the business which the predecessor employer carried out on the same premises. The Board therefore dismissed RPKC's application for termination of the union's bargaining rights.

With regards to the union's application under section 1(4) that Mr. Grocer be declared a successor employer, the Board was of the opinion that RPKC and Willett were carrying on associated or related activities or businesses under common direction or control within the meaning of section 1(4) of the Act. Although the franchisee controlled some aspects of the Mr. Grocer business such as staffing levels, work assignments and the ordering of products and store hours, the franchisor still retained a substantial degree of control over many aspects of the business. In particular, the Board noted Willett's right to inspect RPKC's premises and methods of operation, its control over the manner and timing of the way in which advertising fees were applied towards the advertisement and promotion of the Mr. Grocer concept, and the fact that Willett supplied the majority of products which are sold by Mr. Grocer stores. The Board found that Willett's broad discretion in respect of the prices that it charged for products supplied to Mr. Grocer and its discretion in respect of the portion of the volume purchase discounts or rebates which it passed along to RPKC and other franchises combined with its power to determine the

maximum selling price RPKC could charge for products sold gave Willett effective power over RPKC's gross margins which in turn had a direct effect on its gross and net profits. Although Willett did not exercise all its powers on a daily basis, it exercised many of them and retained the right to exercise the rest whenever it wished. The Board was therefore of the opinion that RPKC and Willett exercised common direction and control over associated or related activities or businesses which they had been carrying on at all material times. Accordingly, the Board in the exercising of its discretion under section 1(4) declared that it would treat Dominion, Willett, and RPKC as constituting one employer for the purposes of the *Labour Relations Act*.

The Board further concluded that the implementation of the franchise program was tainted by an anti-union motivation to the extent that it was understood by Dominion management that they would be unable to make a success of the Mr. Grocer franchise program without substantial modifications to the collective agreement. When it became apparent that the union was not going to agree to such changes, some of the persons responsible for the franchise program began to view decertification as one of the means by which the franchised stores could become economically viable. Thus, decertification became an important element in the implementation of the franchise program. The Board further concluded that the conduct of Dominion and Willett contravened ss. 50, 64 and 66 of the Act because Mr. Ferencz purposely disregarded the contract provisions in the staffing of his Mr. Grocer franchise. RPKC was also in violation of these sections of the Act. The Board remained seized of the proceedings to deal with any remedial matters on which parties were unable to agree. *RPKC Holding Corporation*, 1986] OLRB Rep. June 828.

Employer's insistence on clause allowing employer to discharge with or without cause not a breach of the duty to bargain in good faith

The respondent employer had, *inter alia*, insisted to the point of impasse on a clause allowing the employer to discharge employees, regardless of whether just cause existed, upon payment of a specified amount as severance pay or in lieu of notice. Both parties agreed that the employer was not motivated by anti-union animus nor by the desire to avoid entering into a collective agreement. The complainant union suggested that such a clause was contrary to the spirit and intent of the Ontario *Labour Relations Act*. In the words of the Board: "In effect, the applicant has conceded insofar as the 'process' of collective bargaining is concerned, the respondent employer has not violated section 15. The applicant is really suggesting that the 'content' of the proposed clause is per se illegal and therefore a violation of section 15". The Board adopted the approach taken in *Governing Council of University of Toronto (Royal Conservatory of Music)*, [1985] OLRB Rep. Nov. 1652 and stated that it was not for the Board in a complaint alleging bad faith to assess the wisdom or merits of a particular bargaining position or bargaining proposal. The Board's concern is to ensure that the "process" of collective bargaining proceeds properly and unless it were found that the contents of a particular proposal impeded that "process", or violated some other sections of the *Labour Relations Act*, it would not be appropriate for the Board to inject itself into the collective bargaining process, nor for the Board to attempt to redress the economic imbalances between the parties. Although a "just cause for discharge" clause is the foundation for most collective agreements, the Board found nothing in the statute which required a particular employer to provide such protection nor to agree that it be in that collective agreement. As long as the process of collective bargaining is not hampered, parties are free to take hard bargaining stances, provided they are not taking to impasse an illegal clause and provided there is no suggestion that the process of collective bargaining is being hampered. *Formula Plastics Inc.*, [1986] OLRB Rep. July 954.

Failure to file Form 9 not fatal to request for pre-hearing vote. Mailed ballots for occasional teachers not appropriate in this case

The applicant applied for certification by way of a pre-hearing representation vote for a unit of occasional teachers. The Labour Relations Officer that met with the parties notified the Board that the applicant had failed to file a Form 9 Declaration. The applicant had expected that a Form 9 Declaration filed in a previous application was to have been transferred to this file. The Board said that its requirement of a fresh Form 9 Declaration when membership evidence is transferred from one file to another was well settled. Further paragraph 2 of Form 9, indicates that a declaration prepared for the purposes of a previously filed application could not comply with the requirements of Rule 6 of the Board's Rules of Procedure. Having concluded that a new Form 9 would have to be filed the Board followed *Northridge Plastics Limited*, [1986] OLRB Rep. July 1011 in stating that the applicant's failure to file a Form 9 Declaration made with specific reference to the instant application did not prevent the Board from acting on appearance created by the application for membership and receipt cards transferred to this application. The failure to provide the Form 9 will be a fatal omission only if it remains unremedied when the application comes on for hearing. As it appeared on an examination of the records that not less than thirty-five percent of the employees of the respondent in the voting constituency were members of the applicant at the appropriate time, the Board directed that a pre-hearing representation vote among the appropriate employees be conducted. However, the ballot box was ordered sealed and the ballots cast not counted unless and until an apparently proper Form 9 Declaration was filed by the applicant with the leave of the Board. The Board exercised its discretion to grant leave and extended the time for filing by the applicant of a new Form 9 Declaration.

The case also raised the issue of whether or not a pre-hearing vote amongst occasional teachers could appropriately be conducted via the mail as requested by the applicant. The Board found that while there may be some difficulty in adopting its ordinary approach to certification applications to matters involving "occasional teachers" it did not compel the use of mailed ballots. The Board reasoned that a central location or locations could be identified such that the effort required to travel to it (or one of them) is not substantially different from the effort which might be involved in travelling to work on a teaching assignment and that the polls could be open both during and outside the ordinary hours of work of occasional teachers to ensure that they would be able to attend.

In dismissing the need for a ballot by mail vote, the Board noted that a mailed ballot is by no means administratively simpler than a poll vote, it involves higher administrative costs and runs the risk of disenfranchising those voters whose addresses are inaccurately recorded. Nor can the Board be certain that ballots returned were cast by the eligible voters or that the ballots will be received by the Board before the specified deadline. Further there is the problem of retrieving ballots mailed to wrong addresses. Finally, the Board observed that mailed ballots may well be perceived by the voters as a less secret type of poll.

In conclusion, the Board commented that its broad pronouncement on the superiority of mailed ballots in certification applications affecting occasional teachers may have been premature. While the Board did not suggest abandoning the mailed ballot for all but the most extreme cases, the case of mailed notice and central polls should be seriously considered in each case. The method of voting in cases involving occasional teachers should be a matter for the Registrar, unless otherwise addressed in the decision directing the vote. In this case the Board saw no reason to direct that the vote be conducted by mail. *The Halton Roman Catholic Separate School Board*, [1986] OLRB Rep. July 962.

Rigid bargaining which may not violate s. 15 may, in the context of a particular bargaining relationship, justify an imposed settlement of a first contract

The applicant union had been certified as bargaining agent for a group of the respondent's employees on November 5th, 1984. A "no board" report was issued in October of 1985 and in spite of the fact that the union had made substantial economic concessions to the company, negotiations broke off in November of 1985 and the union applied for first contract arbitration. Although the parties agreed on most substantive provisions the employer steadfastly refused to consider the union proposals with regards to seniority rights, particularly for members who had previously been fired and reinstated by the Board, and the employer insisted on a 3 year term for any agreement.

The Board stated that the first contract arbitration remedy "does not supplant the primacy of the free bargaining process; rather, it recognizes that the negotiation of the first agreement may sometimes be thwarted by unjustified intransigence. Although this is remedial legislation and should be given a liberal construction and interpretation, the scheme of section 40a does not envision the automatically imposed settlement of a first collective agreement in all cases where the parties are unable to negotiate one". What it provides is access to this remedy where the conditions enumerated in subsection (a)-(d) of section 40a(2) have been met. The Board said it was thereby obliged to consider the "process of collective bargaining". In this regard the conduct of both parties is relevant, not only for understanding why the process has been unsuccessful, but also for assessing whether it has been unsuccessful for any of the enumerated reasons. The Board also indicated that section 40a contemplates a cause – and – effect oriented assessment. The applicant will be called upon to demonstrate that the reason for the unsuccessful bargaining process is the employer's refusal to recognize the union's bargaining authority, the respondent's unreasonably uncompromising bargaining proposals, the respondent's dilatory or unreasonable efforts to reach an agreement, or any other reason the Board deems relevant. Unless the applicant is able to do so, the Board will not be entitled to direct the imposition of a first contract arbitration.

The Board also stated that with reference to the principles of "bargaining in good faith", it will not be bound by whether or not the conduct complained of in an application for binding arbitration violates section 15. "Given the Board jurisprudence pursuant to section 15, wherein the Board has held that hard bargaining is not necessarily bargaining in bad faith (*T. Eaton Company Limited*, [1985] OLRB Rep. March 491; *Radio Shack*, [1985] OLRB Rep. Dec. 1789), one is left with the inescapable conclusion that the legislature has intended a different standard to apply in the determination of first contract disputes, a standard peculiar to section 40a adjudications." The absence of sufficient facts upon which the Board could find a contravention of section 15 does not preclude the application of section 40a. "Hard bargaining may not violate section 15, but rigid bargaining proposals may, if they fall within subsections (a)-(d) of section 40a(2), justify the imposed settlement of a first collective agreement."

The Board noted that in collective bargaining uncompromising positions are frequently taken as strategies to elicit compromise and that a bargaining proposal's reasonable justification must be weighed in the context of the current climate of collective bargaining, the particular bargaining process undergone by the parties, the institutional realities from which it derives, and its intrinsic merit.

In examining the evidence the Board was satisfied that the collective bargaining process had been unsuccessful because of the uncompromising nature of the respondent's bargaining position with respect to the term of the agreement and particularly with respect to the employer's refusal to accept a seniority rights clause, both without reasonable justification. The Board therefore directed settlement of a first collective agreement by arbitration. *Nepean Roof Truss Limited*, [1986] OLRB Rep. July 1005.

Employees working only in the ICI sector of the construction industry cannot terminate bargaining rights for the non-ICI sector unit

In this case the applicant sought to terminate the bargaining rights for both the industrial, commercial and institutional (ICI) and non-ICI sector bargaining units of a particular employer. Although the employer in question had at one time worked in all sectors of the construction industry, in recent years the company had been engaged only in residential construction. At the date of application there was no collective agreement in effect covering non-ICI construction activities, and the union had not made any recent attempts to bargain for or represent employees working on residential projects. The dispute centered on the legal significance of the introduction in 1978 of the statutory scheme imposing and regulating province-wide bargaining in the ICI sector of the construction industry. The question before the Board was to determine whether the applicant could seek termination of bargaining rights for both the ICI sector, covered by the statutory provincial collective agreement, and the non-ICI sectors where it is agreed that there was no collective agreement. In both cases the applications would be “timely”.

The Board noted that despite the unique characteristics of the construction industry and its special statutory bargaining scheme, it was not unusual to group employees into different bargaining units depending upon their work characteristics. In those cases, the Board has generally held that employees applying for termination of bargaining rights must actually be employed “in” the bargaining unit on the date of application. Thus an employee in one unit cannot seek termination of bargaining rights for another unit. The Act envisages that there shall be only one collective agreement at a time between a trade union and employer with respect to the employees in a bargaining unit defined in that collective agreement. Further, given the transitory nature of employment relationships in the construction industry, an agreement can be negotiated even where there are no employees in a bargaining unit at the time the agreement is entered into. Thus, there is nothing anomalous in the proposition that employees in the ICI sector and non-ICI sectors may be in different bargaining units, or that the “ICI unit” could remain empty for some years without affecting the validity of the ICI agreement. It was noted that if there were only one bargaining unit with two collective agreements, there would be an apparent conflict with section 49 which dictates that there be only one collective agreement and a potential difficulty in calculating the timeliness of a representation application insofar as both sections 5 and 57 provide that such applications can only be made during the last two months of a collective agreement pertaining to an established bargaining unit.

The Board further considered that under sections 144(1) and 144(2), although the initial bargaining unit configuration may include both ICI and non-ICI employees for the purposes of establishing entitlement to certification, nonetheless, the Board is required to issue two certificates establishing two separate bargaining relationships for ICI and non-ICI work. Further, the statutory scheme and the statutory language governing the process of bargaining seem to contemplate a provincial ICI unit separate and distinct from any other bargaining units of an employer’s employees. Likewise, the timeliness restrictions on construction industry termination applications suggest that there are two units for which bargaining rights can be terminated, at different times, by separate applications. Insofar as ICI bargaining rights are concerned, the provincial ICI agreement covers the timeliness of any termination application brought pursuant to section 57(2), whereas non-ICI bargaining rights would be subject to termination pursuant to section 123(1) of the Act.

In this case the union’s bargaining rights pre-existed the provincial bargaining scheme and in fact, it could be said that prior to 1978 there was a single provincial, multi-sector, bargaining unit. The Board held, however, that this position could not be maintained after the introduction of the provincial bargaining scheme which created, in law, a separate provincial ICI bargaining unit with

particular characteristics and a special set of bargaining rules. Rather, what remained was another provincial bargaining unit comprising all employees working in sectors other than the ICI sector. The fact that the parties were unable to bargain a separate collective agreement for that bargaining unit does not alter the fact that after 1978 those employees were in a separate bargaining unit.

Counsel for the employer argued that the process by which bargaining rights are acquired should be the same as that by which they are terminated, i.e. the statute should not be interpreted so as to diminish the extent of the bargaining rights which could be terminated by a timely application. If it is unnecessary to have employees working in the ICI sector at the time bargaining rights were acquired for that sector, it should not be necessary to have employees working in the ICI sector for the purpose of terminating ICI bargaining rights. The Board held that while “an appeal for symmetry always has some attraction”, nonetheless the mechanisms for acquiring and terminating bargaining rights are not the same. In fact, the Board stated that “it is simply wrong to assume that bargaining rights must be acquired and lost in precisely the same way”. The scheme of the Act itself reflects that ICI and non-ICI employees are now in different bargaining units, subject to a different regulatory scheme. Thus the Board found that in all the circumstances, the company had two bargaining units, — one ICI sector and a separate unit outside the ICI sector. At the time the application was made, there were no employees in the provincial ICI bargaining unit. Thus no one was entitled to bring a termination application as there were no “ICI employees” whose views could be canvassed before determining the disposition of such an application. On that basis the termination application was dismissed insofar as it related to the ICI sector. On the other hand, the employees working outside the ICI sector were entitled to bring this timely termination application, and in respect of those employees the union’s bargaining rights were terminated insofar as the union had indicated that it did not seek to maintain bargaining rights. *Fred Jantz Masonry Construction Company Limited*, [1986] OLRB Rep. Aug. 1083.

One year shelter period from termination application not applicable to construction industry

This case involved an application for a declaration terminating bargaining rights in the construction industry pursuant to section 123(1) of the *Labour Relations Act*. The preliminary issue to be decided by the Board was whether the application was rendered untimely by virtue of section 61(1) of the Act, which extends the protection from termination applications to accommodate the conciliation process. The Board noted the similarity of the wording of sections 57, the general termination provision, and 123, the construction industry termination provision, the only significant difference being that a union’s bargaining rights under the former are protected from a termination application for a period of one year, while under the construction industry provision, they are stated to be protected for six months. Nowhere in the “construction” provisions of the Act does it say that the “general” provisions of the Act are not to apply, but rather, the matter is dealt with as a question of override or “conflict” in section 118.

The respondent argued that all of section 61(1) applies to the construction industry thereby protecting a union’s bargaining rights from a termination application for a minimum period of one year. The only Board case to previously consider the relationship between the sections in question was *K. J. Beamish Construction*, [1967] OLRB Rep. May 205 wherein it was held that the one-year period referred to in section 61(1) was to be read, for construction applications under section 123, as a six-month period, while the additional time limits relating to completion of the process of conciliation would be applicable to the construction industry as well and could extend the time during which bargaining rights are protected. However, section 91 [now 118] was amended since the time of that decision to its present form, specifically omitting section 61, *inter alia*, from section 118’s repugnancy declaration. On this basis the respondent argued that section 61 can no longer be read to be qualified by section 123 insofar as section 123 was intended to be a “no activity” section, only exposing the trade union to jeopardy for its bargaining rights when six months have passed

without the union having even applied for conciliation. While the Board acknowledged that the respondent had put forward a possible interpretation of the various sections, nonetheless it held that on a plain reading of the language used by the legislature, the applicant's interpretation of the scheme of the Act was more plausible. It was noted that sections 57(1) and 123(1) were clearly corresponding provisions for the "general" versus "construction" portions of the Act. The Board held that section 123 seems to reflect a deliberate decision by the Legislature to choose a general framework of one year for non-construction and six months for construction.

In considering whether the amendment to section 118, omitting a series of sections including section 61, should be read as a legislative intent to reverse the Board's position in *Beamish*, the Board noted that section 61(1) is not the source of the one year "shelter" from non-construction termination applications but, rather, the source of that hiatus is to be found in section 57. The corresponding section to section 57 in construction is section 123; the latter clearly overrides the former pursuant to the provisions of section 118. The Board accepted the applicant's argument that the sections which were deleted from section 118 were so deleted because there was no possibility of conflict, i.e. the Legislature was satisfied with the Board's interpretation in *Beamish*, and, in any event, section 61 was covered by amending section 57 to say "subject to section 61". On this basis, it was accepted that sections 57 and 61 are to be read as one section on the issue of timeliness. As sections 123 clearly overrides section 57 with respect to the six month period, then section 61(1) should be read *mutatis mutandis*. On this basis, the Board held that the scheme of the Act is to substitute for the construction industry a six-month period following certification for insulation of a trade union's bargaining rights from termination applications, subject to any extension that the conciliation related time limits in section 61(1) might bring. As the application in this case had been filed outside the six-month period, and more than thirty days after the exhaustion of the conciliation process, it was found to be timely. *International Union of Operating Engineers, Local 793*, [1986] OLRB Rep. Aug. 1097.

Board exercising its discretion to refuse a timely termination application filed nine days after certification

At the outset of this termination application under section 57 of the Act, the respondent requested that the Board refuse to entertain the application pursuant to section 103(2)(i). The application was filed with the Board only nine days after the local in question had been certified as the bargaining agent of the intervenor's employees. It was conceded, however, that the application was timely in the sense that it was filed during the "open period". When the union was certified it immediately became bound by a province-wide collective agreement which was due to expire. Therefore, the termination application, although filed shortly after certification, was timely in that it was filed during the "open period". Counsel for the employer submitted that the Board had no discretion to refuse to entertain a termination application insofar as section 57 is a mandatory provision. In the alternative, it was argued that the Board should recognize as paramount the right of the employees to terminate their agent's bargaining rights and, on that basis, should direct the taking of a representation vote. The Board rejected the argument that it lacked jurisdiction to refuse to entertain a termination application made under section 57(2). Thus the question remaining before the Board was whether it was appropriate in the circumstances to refuse to entertain the application. The Board noted that in cases where a union was faced with a second challenge to its bargaining rights in a short period of time by virtue of an unsuccessful application being quickly followed by either a certification or termination application, the Board has generally taken the approach that once a representation issue had been dealt with on its merits, in the absence of special circumstances, an incumbent trade union ought to be afforded a reasonable opportunity to demonstrate that it can successfully negotiate a collective agreement. However, in this case there had not been an unsuccessful challenge to the respondent's bargaining rights

followed by another application, but rather, the unsuccessful application relied upon by the union arose out of the initial contest for bargaining rights, when the respondent union and an employee association had vied for bargaining rights. The termination application in question was in fact, the first attempt to dislodge the local as bargaining agent for the intervener's employees. Further, the articulated policy of giving parties an opportunity to negotiate a collective agreement appears to be of less importance in the construction industry given the advent of provincial bargaining. In the spectrum of provincial bargaining, the employer and union play a very minor role, if any, in the negotiation of the collection agreement to apply to them. A further factor noted by the Board was that it would have no power to refuse to entertain the termination application if it were not for the employee association's unsuccessful certification application, i.e. if there had been no intervening application for certification filed, the Board would not have the jurisdiction to refuse to entertain a termination application filed in a timely manner.

However, despite these considerations, the Board nonetheless held that after certification, parties require a period of time in order to develop a sound bargaining relationship. Although acknowledging that section 123(1) did not apply in this case, nonetheless the Board recognized that implicit in that section was a recognition that a period of time is needed for parties, not only to negotiate a collective agreement, but also to provide a basis for creating a bargaining relationship. It was noted that if the termination application were permitted to proceed, the Board would direct the taking of a representation vote to determine if the employees wanted the local in question to continue to be their bargaining agent. It was this very representation issue, however, that was determined by means of a representation vote merely three weeks prior to the filing of the termination application at hand. The Board again reiterated that as the parties were entitled to a reasonable period of stability after a representation issue had been decided by a vote, it would be unwise to place in issue the bargaining rights of the local a short time after that local had acquired those rights by means of a representation vote. It was noted that a competition for bargaining rights causes considerable disruption among the employees requiring, where possible, a cooling off period. Thus, in the exercise of its discretion under section 103(2)(i) of the Act, in balancing the interests at issue on the facts before it, the Board held that it should refuse to entertain the termination application. *R.L.D. Electric*, [1986] OLRB Rep. Aug. 1145.

Applying “two-job” rule in hiring hall to striking local member but not to travellers from another local not breaching section 69

The complainant alleged that his union, Local 120, I.B.E.W., violated section 69 of the Act by failing to refer him to a job on which he had bid, essentially alleging that the union did not apply its “two job” rule properly. The “two-job” rule prohibits a local member from being dispatched to a job if he is already employed at another job in the electrical industry. The complainant was not unemployed but on strike from a Hydro project job he had held for some five years. As a result, he was barred by the Local's two-job rule from being referred to a job for which he had bid and would have otherwise been referred, until he was able to produce a separation slip indicating that he was no longer employed on the Hydro site. The element of discrimination arises from the fact that “travellers” (members from other locals) are able to apply for jobs in Local 120's jurisdiction that have been “abandoned” by Local 120 members. Local 120's administration assumed that travellers coming into their local to take abandoned work would be unemployed; the “two-job” rule was not applied to them. As a result, a traveller who was on strike was referred to a job before the complainant. Thus the effect of the “two-job” rule was to prevent striking members of Local 120 from getting jobs that travellers were referred to.

Shortly after the Local refused to refer the complainant to a particular job, Local 120's Executive Board agreed to modify the rule so that striking members of Local 120 would have priority on abandoned jobs (jobs in which no Local 120 member had bid) over travellers. After this

modification, the complainant found work within Local 120 where he stayed until the Hydro strike ended.

The complainant did not question the fairness of the two-job rule; he complained because it was applied to him and not to travellers. Under the province-wide bargaining scheme, the normal pattern is that all workers are on strike at the same time; however, hydro projects are an exception. In the Board's view, the failure of Local 120 to anticipate this situation and to incorporate a contingency into its rules could not be seen as arbitrary in light of the usual reality of bargaining in the construction industry. Furthermore the Board pointed out that as soon as the Local became aware that striking members were being required to quit their jobs before being referred for other employment, it addressed its mind to it and developed a rational solution to deal with that problem.

The Board stated that it did not intend to "second guess" the union's decision nor pass judgment on all aspects of the internal practices or policies of the union except to the extent to which the policies are motivated by bad faith or are arbitrary or discriminatory. The Board affirmed that unions are permitted to make mistakes so long as it can be shown that the mistakes are not the result of conduct proscribed by section 69.

With regards to the complainant's allegation that he was told he would be referred to a particular job and that the rescinding of that referral was arbitrary action on behalf of the union, the Board indicated that even if the complainant had received a referral to the job, once the two-job rule had come to the attention of the union, it would not have been improper for it to rescind the referral even after it had been given. Any cancellation would have been for the purpose of conforming to the rule.

The complainant's allegation of systemic discrimination emanated from the fact that a traveller who was also on strike was able to obtain an abandoned job when the complainant was not. Systemic discrimination results when a neutral rule has disproportionate negative impact on individuals because they belong to a certain group or possess certain characteristics. The Board indicated that the issue was not really one of systemic discrimination but one of differential application. It was not the rule itself which had the alleged discriminatory result but the fact that it was applied to the complainant and not to travellers. The concept of discrimination within the meaning of section 69, is not restricted to the traditional or invidious forms of discrimination such as racial discrimination. An intentional difference in the treatment between travellers and members of Local 120 would likely fall within the prohibition against discrimination under section 69 of the Act subject to a finding of "cogent labour relations purposes". With regards to the question as to whether the cogent labour relations purposes test should be applied prior to a determination that there has been discrimination or afterwards, the Board indicated that applying the test prior to a determination of whether there has been discrimination within the meaning of section 69 is more consistent with the scheme of the Act. Although the Board found no evidence of actual discrimination against the complainant, the two-job rule was found to have as a consequence of its application a more favourable treatment of travellers than certain of its members. Further, the Board stated that even if it had found the two-job rule discriminatory, it existed for a cogent labour relations purpose. It was a rational method of distributing work fairly and equitably and it was not unreasonable to the Local 120 business manager to expect that other locals would refer him unemployed members or to assume that a traveller willing to come into 120's jurisdiction would be unemployed. *Ron Lawrence*, [1986] OLRB Rep. Sept. 1241.

Time limits set out in section 40(a)(4) are directory only

The Board issued its formal decision confirming its unanimous opinion that first contract arbitration was appropriate in this case on July 24, 1986. The employer had called no evidence. On July 29th the Board received notification that the parties had agreed that the Labour Relations Board should arbitrate the agreement. On August 22, 1986 the Board received a formal application from the applicant with attached documentation. The respondent made no reply and filed no material. The Board sent parties a notice of hearing in Form 8 fixing September 10, 1986 as the date for the commencement of the arbitration proceeding. Thereafter the Board received a letter from the counsel for the respondent requesting reconsideration of the original direction to go to arbitration. Although the Board felt that on its face the language of the statute was broad enough to permit this panel to reconsider a decision made by another panel, it was their view that they should not do so in this case. Nor were they prepared to adjourn the arbitration proceeding pending review by the panel which had issued the original direction to arbitration.

The day before the scheduled hearings, the Registrar received a letter from counsel for the respondents indicating that the employer would not be attending, nor would it make any representations on the terms of the agreement the Board should impose. It was also submitted that the Board had lost jurisdiction to arbitrate the terms of the first collective agreement as it had failed to commence the hearing within twenty-one days of the giving of notice to the Board of the parties agreement that the Board should arbitrate the settlement as required by section 40a(4) of the Act. In assessing this timeliness argument, the Board noted that it was without the benefit of the employer's submission on the question, nor did the Board have the benefit of the employer's evidence or representations on any of the other issues arising in the arbitration proceedings. The respondent had simply asserted that because the Board did not begin the arbitration within the twenty-one days, it had "lost jurisdiction".

In assessing the legal effect when a hearing does not commence or a decision does not issue within the time limits specified in the statute, the Board noted that section 40a involved an extraordinary procedure in which both the hearings and decision must be completed within a relatively narrow time frame. The Board concluded that it had not met the time limits specified in section 40a(4) of the Act and although it was unable to establish why the delay had occurred, it did determine that whatever delay there may have been could not be attributed to the applicant. The Board was not willing to construe this administrative oversight as being one that should deprive the union, through no fault of its own, of the opportunity of presenting its case before the Board. The Board rejected the respondent's submission that it had lost the jurisdiction to consider the matter and stated that in its view the time limits in section 40a(4) are not "mandatory", in the sense that a failure by the Board to meet them deprives the parties of the process which they have already voluntarily set in motion. The Board found no default by the trade union or any prejudice to the employer arising from the few days delay nor any authorities or policy reasons to support a more restrictive interpretation of section 40a(4).

With regards to the contents of the collective agreement it was to impose, the Board noted that both parties had failed to adhere to the requirements of Practice Note 19. The union, in support of its position, tendered a collective agreement between the union and another company which the union representative testified was related to the respondent and whose business was similar.

The union asked that insofar as the Board was able to do so, the collective agreement it imposed should mirror the agreement the union had with the related employer. The Board agreed with the union's proposition with the exception that in the absence of the parties agreement on a contract's term of operation, it was bound by section 40a(18) to settle a first agreement that was

“effective for a period of two years from the date on which it is settled”. Apart from that, however, the agreement the Board proceeded to set out was modelled substantially on the prior agreement as per the union’s request.

The Board noted that but before the union’s contentment with the conditions of the model agreement, the Board would not have necessarily imposed those terms nor would it have drafted the clauses in the way in which they were currently formulated. Therefore, the agreement should not be considered as a model of precedent for other situations nor should it be regarded as representative of what the Board considers should be included in a collective agreement. *Nepean Roof Truss Limited*, [1986] OLRB Rep. Sept. 1287.

Use of two-tier initiation fee as an organizing tool not misleading employees

The Board inquired into allegations that organizers for the union had told employees that while they currently could join the union for one dollar, it would later cost them ten dollars.

With regards to the practice of using a lower initiation fee as an organizing device the Board indicated its concern is that employees may join the union during the initial organizing campaign not because of any real desire to be represented by the union, but rather to avoid the risk of having to pay a higher initiation fee if the campaign is successful. The Board has made it clear that it does not prohibit the lowering of the amount of the initiation fee for the purposes of an organizing campaign but what it requires is that union organizers do not seek to mislead employees about the effect of the different initiation fees, and that employees who do not join the union during the organizing campaign be provided with a reasonable opportunity to join for the lower fee after it has been determined that the union will be certified.

To determine whether the employees had been unduly influenced the Board studied the actions of three individuals: the chief organizer, his principal assistant, and a third person. With regards to the activities of the chief organizer the Board found that he had not tried to use the regular ten-dollar initiation fee as a “selling point” in the campaign; indeed he had instructed most of his fellow organizers that they were not to do so. During his conversations with employees, he did not raise the fee differential himself, nor did he seek to mislead employees. However, he had indicated that it would cost ten dollars to join the union later without specifying that “later” meant after a collective agreement had been signed. This raised the question before the Board as to whether membership evidence he collected was unreliable as an employee might reasonably have joined the union simply as insurance against the risk of having to pay the full initiation fee if the union organizing campaign was successful. In the Board’s view the membership evidence remained valid. The Board was influenced by the fact that the difference between the applicant’s regular ten dollar initiation fee and the one dollar fee during the organizing campaign was considerably less than in other cases where a fee differential had been found to have impugned the validity of membership cards. Further, the Board found that at no point had the chief organizer indicated that it would be mandatory for employees who did not join the union during an organizing campaign to subsequently join the union at the ten dollar initiation fee.

The Board had no difficulty with the membership evidence collected by the chief organizer’s assistant. The Board was confident that he had responded to any questions about the higher initiation fee by explaining that after the union was certified and had negotiated a collective agreement, and someone then wanted to join the union, the initiation fee would be ten dollars. The Board found nothing of concern in that response.

With regards to the membership evidence collected by the assisting employee, however, the Board was satisfied that on at least one occasion she had raised the matter of the ten dollar initiation fee in a context that left the impression that if employees did not pay a dollar now they would

be required to pay ten dollars later. Given this apparent attempt to actively use the nine-dollar differential as a sales tactic the Board found that it would be prudent to disregard the six cards obtained by her.

Even after setting aside those six cards the applicant's membership evidence exceeded more than fifty-five percent of the employees in the bargaining unit. A certificate issued to the applicant. *Trim Trends Canada Limited*, [1986] OLRB Rep. Sept. 1312.

Board directing settlement of first collective agreement by arbitration when small, inexperienced employer failed to make expeditious efforts to conclude a collective agreement

This case involved several unfair labour practice allegations under section 89 of the Act, an application under section 57 of the Act seeking decertification of the union and an application seeking a direction of settlement of a first collective agreement by arbitration. With respect to the application for decertification, the Board held that the cumulative effect of several events suggested that the termination petition was not a voluntary expression of the employees wishes. These events included a one dollar raise and benefit package given to the employees subsequent to certification, thereby resulting in an employee perception that the union was unable to represent them adequately; comments by the employer about the union; unilateral changes in working conditions; the separation of the workers into those supporting and those not supporting the union; and the circumstances of an earlier termination petition which the Board held to taint this, the second, termination petition. While mere opposition to a union would not pose a difficulty, clearly actual involvement by management in a petition, or communications that failure to sign a petition would carry negative employment consequences while rejection of the union would bring forth benefits, goes beyond mere opposition. Such conduct need not be contemporaneous with the organization, preparation or circulation of the petition, although it must reasonably be said to indicate to the employees that their support or non-support of the petition may influence their working conditions. Further, there does not have to be actual management influence as it is the perception of the employees which is at issue. As a general principle, a previous petition found not to be voluntary may "taint" a subsequent petition although the second petition need not necessarily be found to be so tainted itself. Thus, although the earlier termination application had been dismissed as untimely, nonetheless the Board was prepared to consider its impact in considering whether the signatures were voluntary with respect to the second petition. The Board had doubts whether the employees signing the second termination petition had rid their minds of the inferences they could draw from the way in which the petitioner had collected signatures for the first termination petition. Thus in all the circumstances, taking into account the lingering impact of the employer's conduct, the presence of the petitioner in the plant while on compensation, separation of union supporters and non-supporters and the effect of the first petition which the Board found not to be a voluntary expression of the employees wishes, the Board was satisfied that the second petition was not a voluntary expression of the employees' wishes and thus the termination application was dismissed.

With respect to the first contract issue, the Board noted that section 40a presumes that if parties are able to transcend this initial hurdle, then they may be able to develop a healthy collective bargaining relationship. The underlying theory is that imposing a collective agreement will leave the parties free to devote their energies to learning how to cooperate with each other, while at the same time giving employees an opportunity to learn about union representation in a calmer and more stable environment. In this case the Board held that bargaining broke down because of the failure of the employer to make expeditious efforts to conclude a collective agreement. It was noted that from the inception of a union presence at Mansour Mining, the employer was reluctant to recognize the union's role as the representative of his employees. Although this was less a result of ill-will than a lack of understanding, nonetheless the employer was held respon-

sible for failing even to read the union's drafted proposal, thereby leading to the breakdown of bargaining. As the Board found that the employer had not engaged in an expeditious effort to conclude a collective agreement, it commented only briefly on whether other criteria had been satisfied within the meaning of section 40a(2). The Board did not feel that section 40a(2)(b) was meant to include conduct such as Mansour's failure to read the proposals, but rather, referred to a "bargaining position". However, it was noted that such conduct would be relevant to section 40a(2)(c). The Board further held that while the unfair labour practices, the decertification application and the segregation of the employees all contributed to the climate at the workplace, and to that end may be relevant to the union's inability to build support among the new employees, nonetheless such factors did not explain why the process of collective bargaining was unsuccessful and therefore could not be said to constitute "any other reason" within the meaning of the section. The Board reaffirmed the finding in *Nepean Roof Truss Limited*, [1986] OLRB Rep. July 1005 that "section 40a contemplates a cause and effect oriented assessment". The Board was of the view that a collective agreement would permit the parties a new opportunity to establish a satisfactory working relationship by eliminating the confusion which had marked the union's presence. Thus the Board directed the settlement of the first collective agreement by arbitration.

With respect to the section 89 complaints, the Board continued to reserve in the hope that the parties could resolve the issues in the process of settling the first collective agreement. The Board remained seized of these complaints, however, with respect to liability and remedy in accordance with submissions made during the days of hearing on these matters. *Mansour Rockbolting Limited*, [1986] OLRB Rep. Oct. 1346.

Breach of fair representation duty resulting in Board awarding damages for loss of opportunity to have grievance arbitrated

In this complaint under section 89, the complainant alleged that the union had breached its duty of fair representation and its duty of fair referral. The Board recognized that the operation of a hiring hall is a complicated matter involving an element of discretion. In the circumstances of this case, the Board was satisfied that the union's conduct constituted a valid exercise of such discretion and did not involve any arbitrary, discriminatory or bad faith action. Thus, the complaint was dismissed insofar as it pertained to alleged contraventions of the duty of fair referral.

The central issue to be determined in the fair representation complaint was whether the union had acted in a manner that was arbitrary in the representation of the complainant. In this case the employer had refused to accept the complainant on its job site following a work stoppage which it felt was started by the complainant. The union did not give the complainant an opportunity to explain his role in the work stoppage or inform him of its decision not to process his grievance.

While several of the matters complained of by the complainant were held to fall within the realm of the discretion legitimately to be exercised by a union official, the Board nonetheless found a number of aspects about the representation by the respondent troublesome. The Board noted that a failure to make detailed notes of conversations with the complainant, members of management, or other persons, does not by itself warrant a finding that section 68 was breached. Likewise, the adoption of a conciliatory approach rather than an adversarial one was held to be a matter of judgment left within the discretion of the union. The Board felt that it would be an unwarranted and inappropriate extension of section 68 for the Board to "second guess" a business representative or other union official on such matters. However, the Board was troubled by the fact that the union representative did not advise the complainant of information he had obtained concerning the complainant's involvement in the work stoppage. In so doing, the union representative failed to give the complainant an opportunity to respond to the damaging information. As a result, the

union representative could not be in a position to advise the company or legal counsel of the complainant's version of the events in question. It was noted that as a general proposition, a union can be said to have breached section 68 if it fails to take reasonable steps to ascertain from the grievor, or to afford him or her an opportunity to discuss, his or her explanation of events and circumstances which, if not contradicted or satisfactorily explained, would lead the union to act against the grievor's interest with respect to the grievance. On this basis, the Board held that the union representative contravened section 68 of the Act by failing to take reasonable steps to afford the complainant an opportunity to state and discuss his version or explanation of his presence at the work stoppage, and to contradict the information that the representative had received from others. The Board further held that the union's failure to advise the complainant that his grievance had been rejected as untimely, and, more importantly, that the union had decided not to proceed any further with his grievance, also evidenced arbitrariness.

With respect to remedy, the complainant did not seek to have his grievance referred to arbitration but rather sought a declaration, a posting and compensation from the union. The Board held that the complainant was clearly entitled to a declaration that the respondent had contravened section 68 of the Act, as well as a posting to advise other members of the union of the Board's disposition of the case. However, the issue of whether the complainant was entitled to a compensation order against the union was more difficult. The normal remedy in this type of case is to direct the union to refer the grievance to arbitration but because this impacts on the employer, it can probably be awarded only in cases in which the employer has been notified of the proceedings and has had an opportunity to participate. No such notice was given in this case because the complainant did not name the employer in the complaint.

The Board noted that while it was possible that the grievance may not have been successful at arbitration, nonetheless the prospects of success were not so remote as to justify a conclusion that the complainant had suffered no loss whatsoever as a result of the respondent's contraventions of the Act. The Board noted that in the few unusual cases in which the Board finds a direction to arbitrate not to be an appropriate remedy, but rather decides to award compensation for a loss of opportunity, the uncertain prospects of the grievance's success at arbitration may be a factor significantly reducing the amount of compensation payable to a complainant. The Board made clear that a complainant would not be permitted to obtain a financial advantage merely by failing to name the employer as a respondent or as a person that may be affected by a complaint involving a refusal to process or arbitrate a grievance. The Board proposed to follow the established practice of dealing only with the question of liability and awarded damages for loss of opportunity to arbitrate, while remaining seized of the complaint for the purpose of quantifying the complainant's loss in the event that the parties are unable to agree on the matter. However, the Board found it appropriate in this case to provide the parties with some guidance concerning that matter. In suggesting a number of factors which should be considered in determining the value of the complainant's loss of opportunity, the Board concluded that the equivalent of approximately one week's pay would likely constitute proper compensation for the complainant's loss of opportunity in all the circumstances. *Angelo Ritrovato*, [1986] OLRB Rep. Oct. 1401.

Departmental bargaining unit not appropriate for collective bargaining in magazine industry

In this case the union sought certification solely for the employees in the editorial department of TV Guide magazine. The Board noted that there was no pre-existing acquiescence in, or pattern of, departmental bargaining and further noted that the Board's decision in *The Spectator*, [1981] OLRB Rep. Aug. 1177 indicated that it would no longer be receptive to the creation of fragmented departmental bargaining units unless the employees met the requirements for a "craft unit" under section 6(3) of the Act, or the proposed departmental unit was otherwise demonstrably "appropriate". The Board relied on the *Spectator* decision as establishing that even

in the newspaper industry, where departmental unionization had existed in the extreme, the Board would no longer routinely accept such bargaining units where they were not demonstrably appropriate.

On all the facts of this case, the Board held that the editorial department employees did not demonstrate a unique community of interest warranting a separate bargaining unit. There was no significant difference in the terms and conditions of employment from those of other TV Guide employees, which in fact are established in the same way and administered by the same personnel department in accordance with common employer policies. Further, there was no significant difference in the employees' work environment and no reason to infer any differences in their "job horizons" or collective bargaining aspirations. From a labour relations point of view, the Board held that the department was not an insular grouping within the company's organization, but rather was an integrated part of the respondent's operation, with the employees having regular and necessary contact with employees in other departments in order to meet the magazine's publishing objectives. The Board further noted that departmental bargaining units could lead to employment relations problems insofar as interdepartmental movement could cause possible friction to the extent that such movement would entail crossing a boundary separating quite different legal regimes. Further, one of the reasons the Board is reluctant to establish departmental bargaining units is the potential for disruption when the single department which is part of an integrated operation opts to engage in industrial conflict. The Board has always held that "spill over effects" are undesirable and should be avoided, if possible, by drafting more comprehensive bargaining units in the first instance.

Despite the union's argument that defining the "appropriate" bargaining unit too broadly may result in organizing difficulties, the Board held that on the evidence before it, it could not be said that departmental bargaining units were the key to establishing stable collective bargaining relationships. Although parts of the publishing industry remain unorganized, nonetheless newspapers have been organized in whole or in part for decades. Thus, although agreeing with the union that self-determination and ease of organization are legitimate factors to be considered in determining an appropriate bargaining unit, nonetheless in this case they were held not to be factors to be given predominant weight insofar as there was one department of an integrated multi-department enterprise with common terms and conditions of employment, geographic proximity, and employee interchange within the same building. The existing pattern of departmental bargaining units was almost exclusively based on the agreement of the parties. There was no such agreement here and no pre-established pattern of fragmented bargaining in the employer's business or in the magazine industry as a whole. The Board noted that as evidence indicates that craft unions and craft units are becoming increasingly obsolete, it would be unwise to give effect to organizing patterns which are becoming outdated and which are not the most appropriate model for organizing.

Thus, the Board held that the proposed editorial department bargaining unit was not appropriate for collective bargaining having regard to factors such as the nature of the work performed, the conditions of employment, skills of the employees, ease of administration, proximity to other departments and functional coherence and independence. It was held that the editorial department employees did not have a separate community of collective bargaining interest. Further, economic factors, the structure of managerial authority, nor the source of work dictated a separate bargaining unit. In the Board's view, a policy of granting departmental bargaining units was not necessary to facilitate organizing in the magazine industry. *TV Guide Inc.*, [1986] OLRB Rep. Oct. 1451.

Board denying stay of proceedings while Courts decide constitutional question of jurisdiction over labour relations in fisheries

The respondent in this case had sought a declaration in the Supreme Court of Ontario that the Board was acting outside its jurisdiction in hearing various certification applications on the basis that labour relations in fisheries are regulated by the Federal Government and not by provincial legislation. Pending an appeal of the Supreme Court's decision that an application for a declaration was premature, the respondent requested that the Board stay its proceedings. In considering this request the Board noted that the Ontario Court of Appeal in *R. v. Ontario Labour Relations Board, ex parte Taylor*, [1964] 1 O.R. 173 held that a tribunal is not required to "bring its proceedings to a halt" by virtue of being served with a notice of motion of *certiorari* or prohibition, but rather is entitled to carry its pending proceedings forward until such time as an order of the court prohibits its further activity or quashes an order already made by which it has assumed jurisdiction. The Board itself has consistently held that it will not stay proceedings while matters are before a court or in the face of a pending application. Further, in the instant case there had already been a decision of the Supreme Court of Ontario supporting the Board's jurisdiction to proceed in this matter until otherwise determined. Thus, having determined that it had the jurisdiction to proceed, it remained for the Board to determine whether it should do so in this case. While recognizing that the Board must take into account various competing interests, in all the circumstances of this case the Board declined to order a stay of proceedings.

With respect to the union's request that the Attorney General be added as a party and given notice of the proceedings, the Board noted that whether the Attorney General should be given notice of the proceedings or brought into the case as a party under Board Rule 79 raised two different questions. The Board was not persuaded that section 79 applied at all. Further, the Board felt that section 122 of the *Courts of Justice Act*, requiring notice to the Attorneys General of Ontario and Canada where the constitutional validity or constitutional applicability of legislation is involved, does not apply to the Board. The Board was of the view that it was a matter of the Board's discretion whether or not it required that notice be given. However, it was noted that principles of fairness do apply. The Board stated that *Canadian Charter of Rights and Freedoms* cases can be distinguished from division of power cases on the grounds that in the former, the Board is making a determination about the validity of legislation, while in the latter, it is determining the threshold question of its jurisdiction. In division of power cases there is no danger that the Board will strike down legislation or a particular provision in a statute. It is well established that the Board has the power to determine its own jurisdiction, subject to the Court's overturning such determination. Further, in this case the Attorneys General had been given notice of the Court proceedings and were, in fact, aware of the application before the Board, yet neither Attorney General had expressed an interest in appearing before the Board in any capacity. Thus in all the circumstances of the case the Board concluded that it was not necessary to give notice to the Attorneys General. *C.P. Fisheries Limited et al*, [1986] OLRB Rep. Nov. 1503.

Union refusal to proceed to arbitration and failure to advise complainants of five day time limit for filing grievances not a breach of duty of fair representation

In this case the complainants each alleged that the respondent trade union had failed in its duty of fair representation pursuant to section 68 of the Act by (1) failing to advise the complainants of the five-day time limit for filing grievances pursuant to the collective agreement and (2) by the ultimate decision taken by the union executive not to proceed to arbitration with the grievances. Each complainant was convicted in criminal court of possession of an illegal substance which they had stored at their workplace. Upon reviewing the evidence, the Board concluded that the union had not violated section 68 and in no respect had acted in a manner that was arbitrary, discriminatory or in bad faith in reaching a decision not to process the two grievances through to

arbitration. In fact, the Board concluded that the union had fairly represented both complainants in reaching its decision, and had properly considered all the relevant factors. The three main reasons put forward by the union justifying their decision not to arbitrate — (1) the seriousness of the criminal charges involved, (2) the slight chances of success at arbitration, and (3) the effect of arbitrating on the overall bargaining relationship with the employer — were all held by the Board to be proper factors to consider in reaching a decision. On the evidence it was clear that the union had considered all the submissions and arguments put to it, balanced the interests of the complainants along with the interest of the membership at large, and reasonably concluded that the grievances should not be taken to arbitration. Thus, the Board held that neither the decision not to arbitrate nor the process undergone to reach that decision constituted a violation of section 68 of the Act.

With respect to the union's failure to inform the complainants of their rights to file grievances and of the time limits for doing so, the Board stated that as the union had not placed any weight on the untimeliness of the grievances in reaching its decision not to arbitrate, any breach arising out of the failure to advise the complainants was effectively nullified with respect to that decision. However, the Board noted that it was still necessary to consider whether the union had breached section 68 insofar as its failure to inform the complainants of the time limitations may have harmed them by reducing the chances that the employer would reconsider the discharges. In considering this, however, the Board stated that the question was not one of whether there was an affirmative duty upon the union to advise the complainants, but rather whether a failure to do so could amount to a violation under section 68 of the Act. The Board noted that both complainants had a copy of the collective agreement. One complainant had been specifically advised that he should contact the union stewards with respect to any employment problems. As neither complainant had approached the union for assistance, the Board assumed that at the relevant times the complainants did not require nor want the assistance of the union. Thus, the respondent union could not be said to have violated section 68 in not advising the complainants of their right to file grievances and the timeliness requirements in respect thereof. The Board stated that to hold that a union violates section 68 by awaiting some indication from potential grievors that they wish to complain about their treatment would place an unreasonable burden upon a union. A union cannot be said to have acted arbitrarily or in bad faith by declining to actively seek out employees to advise them of their rights where such employees had not sought the union's help despite ample opportunity to do so. In fact, the Board went further to state that if any positive duty exists, it is the duty of employees who want union assistance to so request it. Thus, the Board decided that there had not been a violation of section 68 either in the failure of the union to advise the complainants of their rights or in the failure to take the grievance to arbitration. *Tony Medeiros*, [1986] OLRB Rep. Nov. 1541.

Board declining to give an affiliated bargaining agent the right to represent employees in trades other than those covered in the designation orders

In this construction industry certification application the applicant described its proposed bargaining unit as including plumbers and steamfitters. On community of interest grounds, the respondent asked that the bargaining unit be described so as to include "gas fitters". The applicant, while opposing the respondent's request that "gas fitters" be expressly referred to in the bargaining unit description, claimed gas fitting work for its members, on the basis that gas fitting was part of its members' trade. The Board was required to determine the appropriate bargaining unit and whether "gas fitters" should be referred to in the description.

The Board noted that findings of appropriate units, and consideration of either section 6(1) or what is now section 6(3) of the Act, must be made subject to a finding of the appropriate unit under section 144(1). As the ICI province-wide scale of collective bargaining is highly structured

and stratified, the usual factors relevant to a determination of the appropriate bargaining unit have only limited application. While the concept of “community of interest” may still apply, it is subject to the overriding principles and structure set up under section 144 and by the designation system. The Board felt that the proposition that employees other than those covered by the provincial agreement ought not to be included in the provincial bargaining scheme set up by section 144 was supported upon an examination of section 146 of the Act. The purpose of section 146 of the Act is to ensure that unions and their umbrella organizations covered by the scheme of provincial bargaining enter only those collective agreements with respect to the ICI sector which are provincial in scope. The designations explicitly state which trades the employee and affiliated bargaining agents are to represent in bargaining in this sector. In the Board’s view the statutory scheme compelled the Board to find that, for purposes of province-wide bargaining in the ICI sector by affiliated bargaining agents, the only appropriate bargaining unit descriptions are referable to trades or crafts covered by the applicable designation orders. If an affiliated bargaining agent attempted to represent, in the province-wide ICI sector, employees not in trades it was designated to represent, it was held that it would not be representing them in its capacity as an affiliated bargaining agent bound by the provincial agreement. In the province-wide scheme in the ICI sector an affiliated bargaining agent can only represent employees in trades which the employee bargaining agency and the affiliated bargaining agent are designated to represent.

Further, the Board noted that section 139(1)(a) makes it clear that in a certification proceeding pursuant to section 144 of the Act it is the Minister, and not the Board, who designates employee bargaining agents and who must “describe those provincial units” of affiliated bargaining agents. The Act gives the Minister the power to describe the appropriate provincial unit with respect to the province-wide scheme set out under various sections of the Act. If particular trades or crafts are not given to employee bargaining agencies or their affiliated bargaining agents by the Minister’s designation order, then for the purposes of an application pursuant to section 144(1) of the Act, the Board cannot describe the bargaining unit including such trades as it cannot determine an appropriate bargaining unit which includes trades or crafts other than as encompassed in the designation orders. If employee bargaining agencies or affiliated bargaining agents in the province-wide scheme want to represent trades or employees performing skills other than those that have been assigned in a designation order, they can resort to section 139(5) which creates the mechanism for amending the designation orders. Thus, the Board ultimately decided that it could not describe a bargaining unit in this sector so as to give an affiliated bargaining agent the right to represent employees in trades other than those covered in the designation orders in question. However, the trade need not be specifically referred to in the designation and description of the provincial unit, as long as it can be demonstrated that the trade or work not expressly designated is part of a trade which is explicitly assigned. In this case, reference to the designation order made clear that gas fitting was not covered therein. Thus the Board could not include “gas fitters” in the appropriate bargaining unit as found pursuant to section 144(1) of the Act.

The Board went on to state that if it was wrong in this view, then the Board would nonetheless exercise its discretion to conclude that it would be inappropriate to describe a bargaining unit including employees not covered by the provincial agreement. “Gas fitters” are not employees to whom the ICI agreement in question applies. The Board held that in its view the word “pipe fitter” in the provincial agreement did not encompass “gas fitters”. Thus the Board could exercise its discretion to exclude “gas fitters” from the appropriate bargaining unit insofar as to do otherwise would be to include employees not covered by the province-wide scheme. The Board stated that if the statutory language did not actually preclude inclusion of trades or skills not covered by the designation or the provincial agreements, then nonetheless the structure and intent of that scheme must be said to suggest that the appropriate description encompass designated trades and employees covered by their provincial agreements.

With respect to the argument that “gas fitting” constitutes a separate trade or craft, the Board noted that aside from its holding not to include employees in an ICI bargaining unit who would not be covered by the province-wide scheme of bargaining, as a factual matter the Board was also not satisfied that the evidence established that “gas fitting” was a craft or trade within the meaning of section 6(3) at any rate. In fact, the evidence suggested the opposite. Given this finding, the Board felt that it was unnecessary to further determine the question of whether gas fitting work formed part of the plumbing and steam fitting trade insofar as such a finding was unnecessary in order to determine which employees fell within the described unit. *Superior Plumbing and Heating Co. Ltd.*, [1986] OLRB Rep. Nov. 1589.

Pervasive pattern of unfair labour practices relevant in directing settlement of first collective agreement

The union was certified by the Board in November of 1984. During the certification drive and the collective bargaining period, the company consistently violated the freeze provisions of the Act. Amongst these violations were a failure to adhere to prior shift bid policy, withholding pay increases for regular and probationary employees, and ending the practice of supplying uniforms. The employer violated sections 64, 66 and 70 of the Act by changing its disciplinary policy, issuing written warnings for trivial matters, introducing a warning record system, and by withholding profit sharing bonuses. In so doing, the Board was satisfied that the employer sought to discriminate against its employees and penalized them for having exercised their right under the Act to join a trade union.

Negotiations were marked by positions put forward by the company that were of great concern to the union. Among these were a very broad management rights clause, which gave the company an unfettered power to contract out bargaining unit work, and a “just cause” clause that specified discharge as the penalty for refusing to work overtime or for engaging in a set of broadly defined offences. The company also sought the division of the labour force such that certain employees employed less than forty hours a week would not receive benefits. During negotiations employees had their positions eliminated and were forced to bump to other categories of employment. Testimony accepted by the Board also indicated that the company was aware that the language it proposed in negotiations was of the type that no “self-respecting” union could accept. Following an unsuccessful period of conciliation and mediation, the company presented a final offer which incorporated very little of the language proposed by the union, and demonstrated no willingness on the part of the company to compromise on any of the key issues of concern to the union. The union voted unanimously to reject the company’s final offer but did not strike. In May of 1985 the company locked out the union membership and continued to operate with the use of non-union employees.

With regards to the union’s complaint under section 15 the Board had to determine whether the employer had merely been engaging in “hard bargaining” or whether the employer had been contravening the Act by means of “surface bargaining”. The Board found that when all the provisions tabled by the respondent were viewed against the background of the pervasive pattern of unfair labour practices in which the respondent engaged prior to and during the course of bargaining with the union, and in light of the statements made by members of management, it became clear that the respondent was not bargaining in good faith and making every reasonable effort to make a collective agreement.

With regards to the lock-out, the Board was satisfied that at least part of the respondent’s motivation for the lock-out was a desire to punish employees for having joined a union and to dissuade them from continuing to exercise their rights.

With regards to its prior oral direction that a first collective agreement be arbitrated under section 40a the Board stated that the provision obliges the Board to direct a settlement of a first collective agreement where the process of collective bargaining has been unsuccessful because of one or more of the conditions or circumstances listed in subsections (a) to (d). In this case the Board found the respondent did not have reasonable justification for the uncompromising nature of the bargaining positions which it adopted. By engaging in "surface bargaining", the company failed to make reasonable or expeditious efforts to conclude an agreement. Thus the Board was satisfied that the conditions or circumstances specified in subsections 40a(2)(b) and (c) were present, and that they, together with the pervasive pattern of unfair labour practices caused the process of collective bargaining to fail. With respect to subsection 40a(2)(d), the Board stated that the pervasive pattern of unfair labour practices which included contraventions of sections 15, 64, 66, 70 and 79, is another reason the Board considers relevant. Thus the circumstances of this case also fell within the ambit of that subsection.

In regards to remedy, the Board determined that it was not necessary to issue a cease and desist direction in respect of the unlawful lock-out because by virtue of subsection 40(a)(13) issuance of the direction to arbitration of a first collective agreement obligated the respondent to terminate the lock-out and reinstate the employees. However, the employees were entitled to be compensated for wages and benefits lost as a result of the lock-out and the union was entitled to compensation for reasonable expenses it incurred. Employees were also entitled to compensation for losses they suffered during the statutory freeze period as a consequence of the respondent's breach of the section. Discipline imposed in an effort to thwart unionization was ordered rescinded, and suspended or demoted employees were reinstated with compensation for lost wages and benefits. *Burlington Northern Air Freight (Canada) Ltd.*, [1986] OLRB Rep. Dec. 1628.

Concept of final offer selection not applicable under section 40a

This first contract arbitration was referred to the Board on the agreement of the applicant and respondent. The Board noted that there were no statutory guidelines in the Act which required it to have regard to a given standard of comparison to determine the content of a collective agreement. However, it adopted the language set forth in *Burlington Northern Air Freight (Canada) Ltd.*, [1986] OLRB Rep. Oct. 1327 and in *London Drugs Ltd.*, [1974] Can. L.R.B.R. 140 which indicated that collective agreements awarded under section 40a of the Act should not be used to achieve major breakthroughs in collective bargaining but should be sufficiently attractive to bargaining unit members such that they would give serious consideration before deciding to terminate the bargaining rights of the union.

In setting forth the collective agreement the Board rejected the premise that the process envisaged under section 40a was to be based on the concept of a final offer selection. Nor did the Board feel that an arbitrated agreement ought to reflect the relative strengths of the bargaining positions of the parties as it was the very imbalance of the bargaining positions of the parties which was a factor in their inability to conclude a collective agreement themselves. Further, the Board felt that any endorsement of the concept of the relative bargaining positions of the parties would encourage extreme positions to be taken by those parties which perceive themselves to be in a stronger position.

The Board endeavoured to provide an agreement which would prove to be practical and fair and which would provide a basis for a collective bargaining relationship which would extend beyond the expiry of the first collective agreement. In this regard the Board ruled that there should be a check-off as required by the Act but was unwilling to impose a union shop provision. The Board felt it would be unfair in circumstances where the union did not enjoy a preponderance of support to confer a closed shop provision on employees affected by the collective agreement. With

regards to the no strikes or lock-out clause, the Board rejected the respondent's language that sought to have the applicant union bear the responsibility for anticipated slow-downs and/or strikes in the future. In the Board's view this was negative thinking by the respondent and it also failed to take into account that the trade union is frequently not responsible for the conduct of employees. The Board therefore put forth a simple article which stated that there should be no strikes and no lock-outs during the collective agreement.

The effect of the wage proposals made by the respondent was the red circling of a number of employees with the result that they would not receive an increase in pay over the lifetime of the collective agreement. In the Board's view no trade union should be required to accept a collective agreement which discriminates against employees on a totally subjective criteria adopted by the employer. The Board gave the employees an increase in their hourly rate of four percent in the first year and three percent in the second. The respondent argued that it was unable to pay these rates. The Board stated that it would require specific evidence to that effect and in this case the respondent's evidence was neither clear nor impressive. In conclusion the Board noted that collective bargaining is an ongoing process and reminded the parties that under section 52(5) of the Act there was nothing to prevent them from revising by mutual consent any article in this collective agreement. *Egan Visual Inc.*, [1986] OLRB Rep. Dec. 1687.

Labour relations of fishing boat crews on the great lakes falling within provincial jurisdiction

In these certification applications the majority of the respondents challenged the Board's jurisdiction to hear these applications on the basis that labour relations in fisheries is a matter within the jurisdiction of Parliament.

The challenge was raised under two heads of the *Constitution Act 1867*: section 91(10) Navigation and Shipping and section 91(12) Sea Coast and Inland Fisheries. The Board stated that it is no longer in question that labour relations is a matter coming within provincial jurisdiction under the provincial power over property and civil rights under section 92(13) of the *Constitution Act*. Employment relations are regulated by the province; however, there are exceptions to that general rule, in which case Parliament will enjoy jurisdiction. The Board in particular was guided by Mr. Justice Beetz in *Four B. Manufacturing Limited v. United Garment Workers of America and Ontario Labour Relations Board*, [1980] 1 S.C.R. 130 who characterized the test for the exception in which Parliament has jurisdiction over labour relations as comprising "in the main, labour relations and undertakings, services and businesses which, having regard to the functional test of the nature of their operations and their normal activities, can be characterized as federal undertakings, services or businesses".

With regards to "Navigation and Shipping", the Board considered *Reference re the Industrial Relations and Disputes Investigation Act*, [1955] S.C.R. 529 and *Agence Maritime Inc. v. Canada Labour Relations Board et al* (1969), 12 D.L.R. (3d) 722 in which it was strongly suggested that the federal power over navigation and shipping had a limited geographic scope, dealt with the essential aspects of navigation and shipping and was essentially connected with the transportation of cargo by ship. In the case before the Board, the fishing boats operated only in the province of Ontario and were therefore inter-provincial undertakings. The federal power over navigation and shipping was found not to apply. Accordingly the Board found it unnecessary to determine whether fishing boats as such fall within this head of the federal power although the Board did note that there was nothing before it to link federal competence over labour relations in the commercial fishing industry with the federal power over navigation and shipping nor was there anything to suggest that commercial fishing was essential to navigation and shipping.

In determining whether the federal power over Sea Coast and Inland Fisheries gave Parliament jurisdiction over labour relations between fishing boat owners and crews the Board first sought to determine the nature and scope of this head of power. The Board indicated that the scope of the fisheries power is limited to that necessary or incidental to the preservation of fish as a natural resource, and that there was nothing in section 91(12) directed towards regulation or control of rights and obligations as between employees and employers who engage in the business of exploiting the resource. The Board was satisfied on the basis of the authorities that while federal power under section 91(12) has not been finally determined or delineated, it has generally and consistently been considered to extend to the preservation of fisheries as a natural resource. The question for the Board was whether the control of labour relations of fishing boat crews fell within, or was integral to, that mandate. The Board concluded that it was not. The work done by fishermen was not shown to be an “integral part” or “essential to” the conserving, preserving or improving of the resource; nor did labour relations between the crew and the boat owners appear to be an integral part of, or necessarily incidental to, the preservation of the fish resource. The Ontario *Labour Relations Act* does not purport to affect that preservation and conservation of fisheries and its application to the employment relations between owners and crews does not affect the Federal Government’s ability to fulfill its mandate with respect to protecting fisheries as a resource. The Board found no evidence to show that the regulation of employment of fishing crews was an essential part of fisheries. Accordingly, the Board found it had jurisdiction to hear these applications for certification. *Great Lakes Fishermen and Allied Workers’ Union*, [1986] OLRB Rep. Dec. 1691.

Bargaining rights given under the *Quebec Labour Code* do not have extra-territorial effect

Prior to October of 1985 the respondent operated a rubber recycling plant in Quebec outside of Montreal. The applicant union was/is a party to a collective agreement with the respondent pertaining to the former Quebec plant site. The applicant and the respondent had maintained a collective bargaining relationship since 1979 and during the summer immediately preceding the company’s move to Cornwall, Ontario, they had been engaged in negotiations to renew their existing agreement. In October 1985 the company notified the employees that they were being terminated and that the company’s operations would move to Ontario. The Quebec employees were not offered positions in the new Cornwall plant at that time.

The applicant/complainant sought extensive relief for the alleged unfair labour practices, including reinstatement for the Montreal employees, monetary compensation, and a direction that the Quebec agreement applied to the new Cornwall plant, or, in the alternative, certification.

On the evidence, the Board found that the respondent’s Quebec plant was “plagued with difficulties” and faced various imminent financial burdens. These financial troubles were known to the union through the union’s representation on the company’s production committee. Under these onerous financial burdens, the respondent decided to move its operations to Ontario and sell its Quebec plant. The subsequent negotiations and sale were kept entirely confidential.

After being let go, the Quebec employees signed letters indicating their willingness to work at the Cornwall location and gave approval to their union to approach the employer in this regard. The respondent arranged for interviews of the Quebec employees in February of 1986. However, as these interviews commenced, union officials interrupted the proceedings and demanded that all Quebec employees be rehired as a group and that interviews should only take place collectively. The respondent refused and, as a result, the new plant was staffed by drawing on the local workforce. At the time this decision was given, a certification application by the R.W.D.S.U. was pending. The new Cornwall plant had none of the design flaws present at the Quebec plant and

modern equipment permitted a more efficiently produced, better quality product and an expanded product line.

With respect to the assertion that the Quebec collective agreement, as a matter of law, covered the Cornwall location or that, in the alternative, the bargaining rights of the union extended to that location, the Board said that certification of a trade union is a provincial matter, except for those enterprises regarded as falling within the federal sphere. The Board was not prepared to give "extra-territorial" effect to the bargaining rights of a trade union as a matter of law. To grant such extra-territoriality, in the Board's view, would have been contrary to the provincial authority over labour relations as reflected in the various provincial labour relations statutes governing certification. The Board found that the bargaining rights of the applicant/complainant could apply to the Cornwall location only if the collective agreement itself covered that site. The question depended upon the scope clause of the Quebec collective agreement. Because both parties clearly intended by the nature of the scope clause that the collective agreement would cover only Quebec, the Board found that it did not extend to the Cornwall operation and that the union did not possess bargaining rights there as a matter of law.

With regards to the allegation that the company's relocation was motivated by anti-union animus, the Board stated that where a company closes its operations and/or relocates thereby vitiating the collective bargaining relationship, the Board must carefully scrutinize the reasons proffered by the firm. On the evidence the Board found that the firm's Quebec operation was not profitable and that future prospects were bleak. Further, the union was fully apprised of those financial difficulties. The Board found that the documentary evidence tendered in support of the economic rationale for the company's decision was considerable and that the decision was not tainted by anti-union motive. The Board ruled it had no authority to determine whether the respondent's conduct outside Ontario constituted an unfair labour practice.

With regards to whether or not the company's non-disclosure of its impending move during negotiations constituted bad faith bargaining and/or whether relief should be ordered was also not an issue this Board had jurisdiction to decide. What was before the Board was whether that same non-disclosure could be regarded as evincing an anti-union animus in the sense of the company's motive for moving. The Board had already found it did not.

The Board found that the applicant held no bargaining rights in respect of the respondent's Cornwall location under the Quebec collective agreement. Nor was the employer's process of hiring temporary and maintenance and production workers at its plant contrary to sections 64 and 67 of the Act because the employment conditions were different at Cornwall and because a number of Quebec employees had indicated they were not interested in relocating and because the employer did attempt to interview former Quebec employees only to be thwarted by the union. The natural suspicion that the Board attributes to a company that seeks to interview or require new applications from former employees when a plant relocates was unfounded. The Board directed that the applicant's certification with respect to section 8 be dismissed and that the pending certification application by the intervener proceed. *SerVaas Rubber Company Inc.*, [1986] OLRB Rep. Dec. 1780.

Employer's position taken in bargaining that striking employees would only be called back to work in order of seniority as vacancies arose discriminating against striking employees

Employees of the respondent commenced a lawful strike in April of 1983. Shortly thereafter the respondent hired new employees and continued operations. The strike had continued as of the last days of the hearing in this matter (February 1986) for almost three years. The complainant alleged that the respondent violated sections 15, 64 and 66 of the Act by taking the position in

bargaining that the striking employees would only be recalled to work in order of seniority as vacancies arose and by then subsequently withdrawing its outstanding monetary proposal to the complainant when its offer was not accepted.

The portion of the complaint alleging that the respondent violated sections 64 and 66 made section 89(5), the reverse onus section, applicable. Counsel for the respondent submitted that that section was of no force or effect because it was contrary to section 15(1) of the Charter, the equality provision. The respondent submitted that the equal protection and benefit of the law provided for in section 15 had been abrogated by section 89(5) since it imposes the obligation on employers to prove that they did not engage in conduct contrary to the Act while any person who is not an employer can require the complaining party to prove its case. In divining the purpose of section 15 the Board stated that the enumerated classifications that are *prima facie* discriminatory within the meaning of section 15 of the Charter are classifications or distinctions that are based principally on characteristics that relate to physical, cultural, and spiritual attributes to human beings. The distinction in section 89(5) between individuals that arises because an individual is an employer does not in any way limit or affect human dignity or worth nor is it based on the kind of human attributes that section 15 protects. The Board was satisfied that the distinction created by section 89(5) of the Act creates for employers as a class within our society is not discriminatory and is therefore not a distinction to which section 15 of the Charter has any application. The Board therefore expressly declined to comment on whether section 1 of the Charter provides the justification for section 89(5) of the Act.

In assessing whether the respondent violated section 15, the duty to bargain in good faith, the Board stated that it was principally concerned with the process of collective bargaining and not the content except where the content patently demonstrates a desire to avoid a collective agreement. Further, in examining the conduct of the parties, the Board declined to set its own standard as to what a fair or just settlement might be and then measure a party's conduct against that standard. Such an approach is inappropriate because collective bargaining involves the exercise of power by a party acting out of self-interest. The Board noted that the Act does not guarantee employees who engage in a legal strike the absolute right to return to work at the conclusion of the strike. Therefore, merely because the respondent sought to have striking employees return as vacancies arose does not in itself establish a violation of section 15. The Board stated that unless it found that the respondent's position with respect to the return to work of the striking employees contravened the Act, the complainant would have failed to establish a violation of section 15.

In this case, the Board was not persuaded that the employer's refusal to agree to a return to work protocol that might cause the displacement of some or all of the strike replacement employees was not contrary to sections 64 and 66 of the Act. Both groups of employees were in the bargaining unit and, in the Board's opinion, the preference that the respondent exhibited towards maintaining the active employment of persons it had hired after the strike commenced, taken together with the respondent's adoption of a moral obligation to retain those employees could reasonably be viewed as discriminating against the striking employees by reason of the exercise of their rights under the *Labour Relations Act* to engage in a legal strike. The same discriminatory conduct was, in the Board's view, also a violation of section 64 as it impaired the complainant union's ability to represent the employees.

Additionally, since the Board determined that the respondent's position with respect to a recall policy was contrary to section 66, that finding also established the respondent's improper motive for its bargaining position with respect to the recall of the striking employees. Thus, the Board found that the respondent's position on that issue also violated section 15 of the Act. In the Board's words: "[I]t is the antithesis of good faith to maintain a position in bargaining on the only issue that prevents the settlement of a strike that is contrary to section 66 of the Act."

The Board directed that the parties meet within twenty-one days of the release of the decision and that the respondent provide the complainant with a complete proposal for a collective agreement containing a return to work protocol that did not discriminate between employees hired after the commencement of the strike and the striking employees. Further, compensation was ordered for both the union and the employees from the date of the bad faith bargaining at the end of 1984. *Shaw-Almex Industries Limited*, [1986] OLRB Rep. Dec. 1800.

Conduct of City's sanitation workers constituting strike rather than bona fide refusal to work because of safety concerns

In May of 1982, City sanitation workers refused to wear their new fluorescent safety vests. The City told them that if they did not, they could not work at all and threatened suspensions. The employees commenced a work stoppage which continued for several days. The respondent City claimed that the employees were engaged in an unlawful strike while the union contended that they were exercising their rights under the *Occupational Health and Safety Act* as the vests were unsafe.

In the course of the hearings the Board found that the brightly coloured vests were instituted by the Director of the City Sanitation Department based upon his personal whim. Little study went into the instituting of what was to become a mandatory piece of safety equipment. No tests were done nor were union members or their committee representatives consulted on the question of what design of vest might be most suitable or if vests were required at all. Further, the Board found that the Director of the City Sanitation Department was motivated more by his concerns for "management rights" than with any aspect of employee safety. The employees reacted to the introduction of this piece of compulsory safety equipment with resistance and complaints. The vests were considered hot, uncomfortable, unnecessary, and tended to get snagged and caught on things. In particular, there was an allegation that the vest material would not rip or give should it be caught in moving machinery. Most of the early employee complaints had to do with the comfort, necessity or suitability of the vest, rather than any overt safety concerns and the Board felt these complaints were probably influenced by the manner in which the vests were introduced. These complaints were not well received and the City was suspicious that objections were being manufactured. Complaints that did surface at the health and safety committee level went nowhere. In the Board's view, what resulted was a "festering labour relations problem". Several grievances were filed on behalf of employees who had received written warnings about their failure to wear their vests. The grievances all complained that the vests constituted hazards to health and safety because of their extreme physical discomfort (heat). Arbitration, however, resulted in the dismissal of the first of these grievances and the rest were withdrawn. The Board noted that at this point there was no effort by the union to file a policy grievance, launch a complaint under section 24 of the O.H.S.A. or otherwise involve the Ministry of Labour. The Board asked rhetorically why these obvious steps were not taken. In the Board's view, the union's actions indicated that it did not truly regard the vests as a "safety hazard" but rather as an acceptable if second best solution to the problem of employee visibility; the vests would be worn until some suitable alternative was implemented.

On May 19, 1982 the City issued new brightly coloured orange work overalls which the union regarded as the alternative visibility solution. As a consequence, the employees were unwilling to wear both the new overalls and the vests, something on which the respondent insisted. It was the order to wear both the vest and the new uniforms which the Board found on the evidence precipitated the work stoppage. The Board found that the true frustration felt by the employees did not justify a strike or convert the employees' annoyance or protest into a bona fide concern about their personal safety. In finding that the sanitation workers were not engaged in an activity protected by sections 23 or 24 of the O.H.S.A. and that they were therefore engaging in a strike designed to

protest the employer's failure to allow them to remove the vests, the Board was greatly influenced by the fact that the employees had worn their vests for months without incident and in most cases without complaint. In the Board's view, the work stoppage was therefore intended to put pressure on the City to withdraw the apparel which the union no longer considered necessary.

The Board found that it did not need to make a specific declaration about whether, or the extent to which, certain union officials may have counselled, procured, encouraged or supported that unlawful strike or make any other remedial direction other than the finding of an illegal strike alone. In the Board's opinion and subject to section 92 which gives the Board a discretion in this regard, no further declarations were forthcoming. *The Corporation of the City of Toronto*, [1986] OLRB Rep. Dec. 1834.

Implementation of Sunday hours during the freeze a breach of the Act

The union had been in negotiations with the predecessor employer and amongst the conditions agreed to was a Monday to Saturday work week. The predecessor employer sold the grocery store business to the respondent who admitted successorship and agreed to continue bargaining. The successor employer did not agree with the six-day work week and requested the union's consent to open on Sundays. The union refused to consent. Nonetheless, the respondent proceeded with Sunday openings, staffing those hours on an entirely voluntary basis. No employee lost time or wages or was forced to work on Sundays as a result of this change in scheduling. The parties agreed that the store had never been open on Sundays before and that the Sunday openings commenced during the freeze period. The union complained that the successor employer had violated section 79 of the Act by instituting Sunday working hours.

The Board found that the respondent had instituted Sunday openings in response to business pressure brought on by the Sunday openings of local competitors. The Board stated that it was not called upon to assess the situation in terms of the *Retail Business Holidays Act* nor was it necessary to either condone or condemn the propriety of Sunday openings. The issue before the Board was whether the respondent's introduction of Sunday openings violated the freeze provision in the absence of union consent or was it, by virtue of its impact on the union or employees, outside the grasp of the section's purpose?

The purpose of the freeze provision is to preserve a defined and understood status quo during that period with the overall objective of facilitating a stable environment within which the parties can concentrate on meaningful collective bargaining. The development by the Board of flexible interpretative tools such as the "reasonable expectations" and "business as usual" tests are evolutionary illustrations of a longstanding practice of construing the section in a way which acknowledges the sanctity of its purpose, recognizes the limits of its ability to be categorical and authorizes a singular determination in every case based on existing jurisprudence but dependent on the factual variables before the panel.

In this case the union did not suggest that the employer's pre-existing pattern of management excluded the right or duty to arrange shifts based on need for services, but argued that opening on Sundays was not "business as usual". The Board agreed and ruled that by opening on Sundays, the respondent employer was adding a day uniquely protected by its legal and social history as a non-working day. By virtue of this uniqueness, and without passing judgment on the morality or legality of Sunday openings, the Board found that a change had unilaterally occurred which was technically beyond the ambit of the respondent's scheduling rights. The Board was of the view, however, that this was not an appropriate case in which to grant any remedial relief. *Anderson's City Farm Valu-Mart*, [1987] OLRB Rep. Jan. 1.

Board suggests that the examination of a representative period for the purpose of deciding which employees are to be included in the bargaining unit for the purpose of the count in a construction industry certification application be discontinued

In this application for certification the Board reviewed the tests it has employed in order to determine whether a person should be included in the bargaining unit for the purpose of the count in the construction industry. The Board stated that a person must be at work for the respondent employer on the date that the application is made in order to be included in the bargaining unit for the purpose of "the count". Further, the employee must have spent a majority of his time, on the date of application, doing bargaining unit work. Where an employee was doing the work of one trade or craft on the date of application but prior thereto had been engaged in doing the work of several trades or crafts at the same wage rates, the Board has long been willing to examine a period of time prior to the date of application that is representative for the purposes of ascertaining what work the employee spends the majority of his or her time doing and so determine whether or not that employee should be included in the bargaining unit. The length of this representative period has varied on a case by case basis. However, the Board commented that recourse to a "representative period" has made the certification process in the construction industry less consistent, certain, and expeditious than it might be, and that the use of any such period is inconsistent with the requirement that a person be both employed by the respondent and at work on the date of the application. In the Board's view, the very nature of a "representative period" is such that its length will vary according to the circumstances of a particular application and creates uncertainty. Further, the examination of a representative period overlooks the fact that once a trade union has been certified as bargaining agent for a bargaining unit of employees of an employer in the construction industry, any collective agreement to which the employer becomes bound, whether a provincial agreement or not, will apply to persons doing the work covered by that agreement. Consequently, whether or not an employee is covered by a particular collective agreement and represented by a particular bargaining agent depends on the work that he/she is doing at the time and is in no way dependent on the work that he/she performs during any previous period.

The Board therefore suggested that the use of a "representative period" be eliminated and that the Board restrict itself to the following criteria: (a) whether the person was employed by the respondent and at work on the date of the application; and (b) if so, the work that the person spent the majority of his/her time doing on the date of application or (c) where there is no conclusive evidence with respect to the work that the employee performed on the date of application, any other relevant factors, including the primary reasons for hire. *E & E Seegmiller Limited*, [1987] OLRB Rep. Jan. 41.

Ministry of Community and Social Services' unwillingness to increase funds available for wages to employer not constituting grounds for first contract arbitration

In this case the union claimed that bargaining had been stifled by the constraints imposed by the Ministry of Community and Social Services on the funds available to the employer for wage increases, warranting the exercise of the Board's discretion under section 40(a)(2)(d) to order settlement of a first collective agreement by arbitration. The respondent cared for juveniles placed in its custody by the courts under the provisions of the *Young Offenders Act*. Comsoc controlled and supervised the respondent and provided all its funding. For the fiscal year 1985-1986 Comsoc had funded a budget for the respondent which envisaged wage increases of no more than four percent. A similar amount was allocated for fiscal year 86-87, and was anticipated for fiscal year 87-88. If the union's monetary objectives were to be achieved, Comsoc would have to come up with more money. The union submitted that the collective bargaining impasse resulted entirely from Comsoc's unwillingness to fund the program at a level which would permit wages and benefits equivalent to or approaching those already paid to civil servants working in Government-run

juvenile detention homes. Comsoc had also developed a strike plan involving the transfer of residents to other facilities in the event of a work stoppage. In this respect the union portrayed Comsoc as a potential strike breaker with unlimited resources which effectively sterilized the process of collective bargaining and immunized the employer from the pressure of a strike.

In reviewing the course of collective bargaining the Board found that even though a strike vote had been taken, no strike was called and that subsequent to the parties meeting with a mediator, the employer had initiated at least three further bargaining sessions. The Board noted that to some extent its hearings in this application in fact interrupted an ongoing bargaining process. The Board further questioned the extent to which the union could realistically expect to achieve “cadillac language” in a first collective agreement. The Board stated that while equity or fairness might suggest that the respondent employees should be paid in the same manner as their civil service counterparts, that was not necessarily a realistic collective bargaining stance.

The respondent’s final wage proposal was not out of line with what was currently being negotiated elsewhere. Nor was it obvious to the Board that the result of sincere bargaining on the respondent’s part would inevitably be a salary or benefit package approaching that currently prevailing for the huge civil service bargaining unit — OPSEU.

The Board dismissed the application for a direction for contract arbitration. In its view it was too early in the process to say that the bargaining process had been unsuccessful at all. The employer had made reasonable efforts to conclude a collective agreement, it had not taken a rigid stance at the bargaining table designed to show employees that they could not benefit from collective bargaining, nor engaged in unfair labour practices. The Board concluded that the employer had tried insofar as its budget permitted to accommodate the union’s concerns.

With regards to the union’s assertion of impotence, the Board stated that it was not evident that a strike would have had no impact. Moreover, section 40a neither requires, nor rules out, resort to a strike or lock-out — the traditional levers in a collective bargaining process which recognizes the realities of economic power and is designed to elicit compromise, concessions and accommodation. As the Board could not say that collective bargaining had been unsuccessful because the parties had not yet arrived at an impasse, the application was dismissed. *Juvenile Detention (Niagara) Inc.*, [1987] OLRB Rep. Jan. 66.

Termination votes ordered at Eatons’ stores

This case dealt with ten applications under section 57 of the Act in which the applicant(s) sought a declaration that the respondent union no longer represented unionized employees at five separate Eatons store locations. A common basis for the union’s opposition to each of these applications was the allegation that wage increases Eatons gave to employees at its non-unionized stores, while it continued to pay unionized employees at the rates specified in the collective agreements, sent a signal to bargaining unit employees that continued union representation would have adverse economic consequences for them. The union argued that it was this message that prompted the petitions which circulated thereafter and should lead the Board to find that the petitions were not voluntary. The introduction of this wage increase issue led the Board to hearing evidence about the historic patterns and timing of wage increases at Eatons stores before any of them were organized. The Board responded to the union’s atmosphere argument by indicating that the wage increases at Eatons unorganized stores did not have as their real purpose the origination of a termination application at its unionized stores, nor would knowledge of those wage increases have prevented employees from making up their own minds about continued representation by this union.

In a majority of these cases, the union also attempted to impugn the termination petitions because they involved one or more section heads in their origination and circulation. Section heads are bargaining unit employees and are not members of management. The union argued that since section heads frequently acted as conduits to and from management, employees would perceive them to be acting as agents of management when soliciting petition signatures and when making statements about the advantages of terminating the union's bargaining rights. The Board indicated that what was required was an analysis of all the surrounding circumstances and an assessment of whether other employees would likely have viewed the particular lead hand employee in question as acting on behalf of, or with the support of, management, or whether the section head would likely have been perceived as a bargaining unit employee seeking only to further his own self-interest. On the facts the Board concluded that the mere knowledge that an originator or circulator of a petition was a section head would not likely have led a bargaining unit employee to conclude that the petition was being circulated for or with the support of Eatons.

All the petitions were found to be voluntary and the Board ordered representation votes in each of the units. *T. Eaton Company Limited*, [1987] OLRB Rep. Jan. 141.

A virtually province-wide unit of editorial employees at community newspapers found to be appropriate

The respondent operated a chain of community newspapers. Both parties agreed that a unit composed of editorial employees was appropriate, but they were in dispute as to the appropriate geographic scope. The applicant sought a virtual province-wide bargaining unit, while the respondent contended that the bargaining unit description should adhere to the Board's general policy of restricting bargaining units to municipal-wide bases.

In finding that the appropriate bargaining unit was the more comprehensive version sought by the applicant, the Board summarized the principles which guided it in its determination of the appropriate geographical unit. Generally the Board has applied the concepts of community of interest and municipal-wide units. The Board emphasized, though, that community of interest is not an "all or nothing phenomena". Rather, the question for the Board is: "Is there a sufficient community of interest amongst those employees for whom certification is sought that the resulting unit is viable for collective bargaining purposes?". Thus, the investigation of community of interest goes to the issue of viability.

The Board's practice of describing the geographic scope of bargaining units in terms of the municipality in which an employer's operation is located must be understood as the Board's mechanism for expeditious resolution of that issue and an effort to strike a rough balance between stable bargaining structures and individual freedom of choice. On the instant facts, in the Board's view, there was much more than "sufficient" community of interest amongst the various editorial employees. The Board cited such factors as: the community newspapers were identified as a group by virtue of their common colour scheme on their banners; the editorial page opinions, although established at the local level, adhered to the corporate policy of providing community news under a copyright held by Harlequin; administrative matters such as payroll and financial accountability were highly centralized; and employees were subject to the same corporate policies with regards to benefits and working conditions. The Board also noted that the promotion route for employees was the publishing organization as a whole rather than simply the individual paper.

The Board ruled that the geographic disparity of location did not outweigh the factors of commonality, particularly because employees on different papers were in frequent contact with one another and because many of the papers clustered around Metropolitan Toronto were not geographically distant from one another.

The Board also stated that it must assess whether the broad bargaining unit configuration would create labour relations difficulties for the employer and that it must be sensitive to the pattern of distribution and the level of employee support for the applicant. The Board was satisfied that employee support in this case was not so skewed as to raise concern that the applicant had tailored its proposed unit to sweep in employee groupings which did not support the applicant and could themselves constitute an appropriate bargaining unit. Support for the applicant was substantial across various locations and there was no concern that the unit sought had been in any way “gerrymandered” by the applicant. *Harlequin Enterprises Limited*, [1987] OLRB Rep. Feb. 226.

Constitutional jurisdiction over the labour relations of employees providing security services to the Federal Government falling within federal jurisdiction

The respondent objected to this application for certification of a bargaining unit of security guards on the ground that the Board lacked the jurisdiction to deal with the application because the activities of the respondent fell within federal jurisdiction. The respondent provided security services to departments and agencies of the Federal Government such as Revenue Canada, Transport Canada, Public Works Canada, etc. The respondent also provided passenger screening services to the Department of National Defence at its Canada Forces Base in Ottawa and security services at a government complex in Hull, Quebec. With the exception of the pre-board passenger screening, all of the respondent’s services at Federal Government sites in Ottawa-Carleton were provided pursuant to a detailed, written “standing offer agreement” in the form of a contract prepared by Supply and Services Canada. This contract mandated formal classroom training for security personnel and set out conditions which constituted “cause for immediate removal” of security guards from federal sites. The Federal Government monitored the quality of the security services and administered examinations to all of the respondent’s employees working on Federal Government sites.

There was no dispute between the parties as to the legal principles to be applied and resolved in the jurisdictional issue. The Board noted that the regulation of contracts of employment, hours of work, minimum wage, and other aspects of employment law including labour relations, are generally matters of “Property and Civil Rights in the Province”, within the meaning of section 92(13) of the *Constitution Act*, and, accordingly, are generally within the jurisdiction of the provincial legislatures. However, the Board noted that federal labour law applies to employees of employers who are engaged in enterprises that are within the federal jurisdiction, such as those set forth in section 91 and in parts (a), (b), and (c) of section 92(10) of the *Constitution Act*. In finding that the labour relations of the security guards employed by the respondent fell under the *Canada Labour Code*, the Board indicated that its approach would be the one put forth by Paul Weiler as Chairman of the British Columbia Labour Relations Board in *Arrow Transfer Company Ltd.*, 74 CLLC ¶16,130 in which he stressed that the courts have looked at the particular subsidiary operation engaged in by the employees whose collective bargaining is in question to reach a judgment about the relationship of that operation to the basic federal undertaking. Generally the courts and labour boards have characterized the part the particular operation may play in the overall enterprise as having to be a “vital”, “essential”, “integral”, “important” or “intimate” roll in the undertaking if it is to fall within the jurisdiction of Parliament.

The Board also noted an unreported decision of the Canada Labour Relations Board in which the Canada Board found that it had constitutional jurisdiction over security employees of Burns International Security Services Limited working at the Gander International Airport in Gander, Newfoundland, and certified the International Association of Machinists and Aerospace Workers as their bargaining agent. The Ontario Board agreed with that conclusion, and held the same to be true of the respondent’s employees who provided passenger security services for the

Department of National Defence at its Canada Forces Base in Ottawa. In the Board's opinion, the pre-board passenger screening security services clearly had a vital, essential, integral, important and intimate role in aeronautics which is a well established area of federal jurisdiction.

The Board also concluded that constitutional jurisdiction over labour relations between employers and employees who provide security guard services on an ongoing basis to departments and agencies of the Federal Government also fall within the ambit of federal jurisdiction. The tasks security personnel perform for the Federal Government including the evacuation of buildings in fire/bomb threat situations, the arrest of persons committing criminal offences, the guarding of sensitive and restricted areas, and the operation of control rooms in normal and emergency situations, play a vital, essential, integral, important, and intimate role in the operation of those departments and agencies and are necessarily incidental to such operations, which fall within various heads of the federal power under section 91 of the *Constitution Act*. The application was therefore dismissed. *National Protective Service Company Limited*, [1987] OLRB Rep. Feb. 245.

Actions of O.F.L. in pro-choice abortion activities too remote to found a religious objection to paying dues to O.P.S.E.U.

This case involved an application under section 53 of the *Colleges Collective Bargaining Act* for exemption on the grounds of religious conviction or belief from the union security provisions in a collective agreement entered into between the respondent trade union and the respondent employer. The primary thrust of this application was that the complainant should be granted relief under section 53 in view of the fact that in September of 1984 the Ontario Federation of Labour (OFL), of which OPSEU is an affiliate, donated \$3,000.00 to the Ontario Coalition of Abortion Clinics, a pro-choice organization which advocates free-standing abortion clinics. The Board found that the concept of remoteness was applicable in the circumstances of this case. The OFL's actions to which the complainant objected were its donation to the O.C.A.C., the pro-choice activities of Mr. Pilkie and the OFL's women's committee, and the passage of a pro-choice resolution at the OFL convention in November of 1984. It held that OPSEU, the complainant's union, was not in a position to prevent the OFL, its officials or the majority of its delegates to the 1984 O.F.L. convention from engaging in any of these pro-choice actions. OPSEU had only one representative on the OFL's twenty-three person women's committee. However, there was nothing in the evidence which suggested that a different result would have been obtained if someone from OPSEU had been in attendance and had voted against the payment. It was clear from the evidence that as one of many affiliates of the OFL, OPSEU was not in a position to dictate the activities in which the OFL, its officials and its committees would or would not engage. As passage of the resolution to which the complainant objected was a matter beyond the control of OPSEU, the Board was not satisfied that the applicant because of his religious convictions or beliefs objected to paying dues or contributions to OPSEU. *Paul H. Tremblay*, [1987] OLRB Rep. Feb. 284.

Sub-contract of reforestation work found to be a transfer of an "undertaking" within meaning of *Successor Rights (Crown Transfers) Act*

The applicant union sought a declaration that there had been a transfer of an undertaking from the Crown to KBM Forestry Consultants Inc. in the form of a sub-contract wherein KBM agreed to perform certain harvesting work previously carried out by employees represented by the union. The union thus sought a declaration that KBM was bound by the collective agreement entered into between the union and the Crown.

The Board noted that the *Successor Rights (Crown Transfers) Act* was enacted to fill the gap insofar as the sale of business provisions of the *Labour Relations Act*, section 63, did not apply to the Crown. The wording of the new statute, however, was different from that found under the

parallel section 63 to reflect the nature of the wide range of activities engaged in by the Government. Thus, although section 63 jurisprudence is applicable to applications under the *Successor Rights (Crown Transfers) Act*, cases under the latter statute must be considered in the context of the wording of that Act. The Board has held that its interpretation of section 2 of the *Successor Rights (Crown Transfers) Act* is not limited by its interpretation of section 63 of the *Labour Relations Act*, but rather must be given a broad interpretation which takes into account the extensive definition of “undertaking”.

Underlying the legislation is the principle that gains achieved by a union with respect to jobs integral to a particular government program are not to be lost upon transfer of such programs to a private entity. It was noted that the transfer of work alone does not meet the requirements of section 63, but rather, there must be a sale of business or part thereof as defined in relation to economic organization, including physical assets, operating personnel and goodwill. By contrast, under the *Successor Rights (Crown Transfers) Act* that which may be transferred or conveyed includes “projects” or “programs” or “work”. In this case the Board was satisfied that a “program” or “project” was the most relevant form of undertaking listed in section 2. The Crown was involved in a reforestation project or program wherein it was necessary to harvest seedlings which would later be replanted. A portion of this harvesting, previously done by the Ministry, was now carried out by KBM. The Ministry had transferred that part of the project to the consulting company while retaining an interest in ensuring that the work performed therein was performed in a manner consistent with the standards established by the Ministry for the reforestation program. The Board held that these facts brought it squarely within section 2 of the *Successor Rights (Crown Transfers) Act* — the fact that KBM may have provided its own major equipment and, for the most part, its own work force did not mean the contract between it and the Crown did not fall within the framework established by section 2 of the *Successor Rights (Crown Transfers) Act*. In fact, it was not surprising that the Crown would contract work to an established company already possessing the expertise, equipment and significant personnel required. The Board was satisfied that there had been a continuation of the work and that the union OPSEU was the bargaining agent for employees performing that work and that the Crown and OPSEU were parties to a collective agreement applying to that work. Thus, the Board declared that there had been a transfer from the Crown to KBM and that that company was bound by the collective agreement entered into by the Crown and OPSEU. *KBM Forestry Consultants Inc.*, [1987] OLRB Rep. Mar. 399.

Contracting out of cleaning services not constituting a sale of business

This application under section 63 of the Act, the sale of business provision, arose upon the contracting out of cleaning services by the respondent to the intervener. The respondent was in the business of producing and marketing life and health insurance and annuities. The respondent acquired land on which was built the first of two twin towers to house the Canadian head office of the respondent’s business. Through its own employees, the respondent provided maintenance and cleaning services for its own offices and those of its tenants. Upon acquiring land on which was built the second of the twin towers, the respondent invited tenders from various office cleaning service companies to assume this function for all of the occupants of this second tower. Based on the tender submitted by the intervener, it was awarded a two-year contract. Because of the satisfactory maintenance and cleaning services provided by the intervener, it was invited in 1986 to submit a bid to provide the same services at the first twin tower. Thus, the intervener commenced to provide cleaning services for the respondent and its tenants in October 1986 for a twenty-month period. At no time was the intervener involved in discussions with the respondent in respect of the transferring, acquiring or hiring of any of the employees of the respondent. All staffing was done by the intervener in the same manner as for any other job site, i.e., through the personnel department of the intervener and advertising in local newspapers.

The intervener assumed full control, maintaining an on-site supervisor on the premises to direct its workforce and take any disciplinary action that was called for in respect of these employees. As a result of the takeover of the cleaning services at the first twin tower, the respondent terminated the services of forty-eight part-time employees, as well as ten full-time employees. A collective agreement was in force between the applicant and respondent covering building maintenance and cleaning operations. Former cleaning employees of the respondent were allowed to apply for employment with the intervener under the same terms and conditions available to all applicants. There was no relationship between the respondent and the intervener insofar as there were no common owners, directors or staff. The intervener had carried on an independent cleaning service business since 1967. In order for the applicant to establish its entitlement to a declaration that the respondent sold part of its business to the intervener, it had to persuade the Board that the respondent's leasing of premises to tenants at the first twin tower was "part of its business". The Board referred to the case of *The Corporation of the City of Stratford*, [1985] OLRB Rep. June 923 wherein it was concluded that as the contractor had exercised fundamental control over the working lives and working environment of the employees and as the contractor had been a pre-existing entity with its own management structure, capital assets, employees, entrepreneurial initiatives and business skills, there could not be said to have been a transfer of a part of the City's business to the contractor although there undoubtedly had been a transfer of work. The City had merely transferred to the contractors work which it no longer wished to perform. Thus, drawing an analogy between that fact situation and the case at hand, the Board found that the contracting out arrangement was nothing less than a bona fide or true contracting out arrangement of the cleaning services in question. Thus there could not be said to have been a sale of business within the meaning of section 63 of the Act. *Metropolitan Life Insurance Company*, [1987] OLRB Rep. Mar. 413.

Nurses a craft only when confined to historical bargaining unit description of "employed in a nursing capacity"

In this application for certification the Ontario Nurses' Association asked the Board to alter its normal bargaining unit description of "all registered and graduate nurses employed in a nursing capacity" by deleting the qualifying words "employed in a nursing capacity". The Board was asked to apply the provisions of section 6(3) of the Act which allows for separate craft units. While the Board was sympathetic with the problem facing the union insofar as the incidence of litigation regarding the definition of "employed in a nursing capacity" had been relatively high, nonetheless, the Board was of the opinion that the provisions of section 6(3) of the Act were simply not available to the union in the circumstances. The Board stated that section 6(3) was available solely on the basis of collective bargaining history — an applicant trade union is entitled to demand the unit that collective bargaining history has itself established. While the Board was satisfied that the group of employees in question fell within section 6(3) to the extent that they were "employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts", nonetheless that was held to assist the union only to the extent of its own traditional bargaining unit. As the union was requesting the Board to alter its normal bargaining unit description of "all registered and graduate nurses employed in a nursing capacity" by deleting the qualifying words "employed in a nursing capacity", it faced the problem that the "skills" by virtue of which the union's members had always been set apart in their own bargaining unit had, in fact, been defined by reference to nurses "employed in a nursing capacity".

The Board referred to the case of *Kidd Creek Mines Limited*, [1984] OLRB Rep. Mar. 481 wherein it was stated that the statutory language of section 6(3) indicates that it was carefully

drafted to preserve the status quo. The section is a recognition of historical organizing patterns, rather than any general endorsement of craft bargaining units. Thus, section 6(3) is available only if the group of employees whom the union seeks to represent already commonly bargains separately and apart from other employees, and only if the applicant trade union has traditionally represented employees with those skills. It was noted that these conditions effectively preclude the development of new craft unions and further, limit the extension of craft bargaining patterns beyond their traditional boundaries. On this basis, the Board held that the applicant's argument on the basis of section 6(3) of the Act could not assist it in eliminating the words "employed in a nursing capacity" from the description of the bargaining unit. Thus, the Board concluded that those words would be adopted by the Board in the case before it. *Porcupine General Hospital*, [1987] OLRB Rep. Mar. 423.

VI COURT ACTIVITY

During the year under review, the courts dealt with ten applications for judicial review. Of these, nine were dismissed. In the other case the majority of the Divisional Court agreed with the applicant that the Board exceeded its jurisdiction by ordering a remedy which was not authorized by the *Labour Relations Act*, and an application by one of the co-respondents for leave to appeal was dismissed.

In five of the nine applications for judicial review which were dismissed by the Divisional Court, the applicants sought leave to appeal to the Court of Appeal. Two of these leave applications are still pending, two have been dismissed, and one was granted and that appeal is pending.

Three applications for judicial review were withdrawn, discontinued or abandoned by the applicants in the year under review.

An application to stay Board proceedings pending a judicial review application was dismissed. In a leave to appeal application, a stay was ordered on consent of the parties.

An application by a respondent in Board proceedings for a declaration under the Rules of Civil Procedure respecting the Board's jurisdiction was dismissed as premature.

The Board stated a case to the Divisional Court respecting the failure by parties to a Board proceeding to comply with Board orders, which resulted in fines being imposed on those parties by the Court.

The Board this year appealed two Divisional Court decisions from 1985 to the Court of Appeal. In one case, the Board was successful and the other party then obtained leave to appeal to the Supreme Court of Canada. In the other case, the Board was unsuccessful and is seeking leave to appeal to the Supreme Court of Canada.

Fourteen other applications for judicial review are pending as at year end.

The following are brief summaries of matters involving the Labour Relations Board which went to court during the fiscal year.

Amalgamated Transit Union, L. 113
Supreme Court of Ontario, Divisional Court,
June 23, 1986; Unreported

The TTC brought an application for a declaration of illegal strike respecting the refusal by bus drivers, encouraged by the union, to cross the picket lines of striking Eaton's employees. The *Toronto Transit Commission Act* prohibited strikes, and the TTC, which had had a policy for 30 years of accommodating drivers who wished to avoid picket lines, had recently advised the union that it would no longer do so. The Board found that, despite the past policy of the TTC, the refusal to do assigned work in concert amounted to a strike, and issued a declaration of illegal strike and a cease and desist order against the employees and the union.

The union sought judicial review on the grounds that the Board had erred and exceeded its jurisdiction by interpreting the *Labour Relations Act* and the *Toronto Transit Commission Act* in a

patently unreasonable manner, and by making an order which contravened the latter and was inconsistent with the rights of employees under the former.

The Divisional Court dismissed the application for judicial review on June 23, 1986.

Arlington Crane Service Ltd.
Supreme Court of Ontario, Divisional Court,
October 31, 1986; 2 A.C.W.S. (3d) 243
Ontario Court of Appeal,
February 16, 1987; Unreported

The union had referred to the Board a construction industry grievance respecting Arlington Crane's hiring of non-union workers. Before the hearing commenced, Arlington Crane brought an application for judicial review seeking to quash a summons issued by the Board and to prohibit the Board from proceeding further with the arbitration, and a declaration that various sections of the *Labour Relations Act* respecting offences, grievance arbitrations and the structure of the Board were of no effect, on the grounds that the sections of the Act violated several sections of the *Canadian Charter of Rights and Freedoms*.

The Board refused a request from Arlington Crane that the Board hearing be adjourned pending the judicial review, and proceeded to find Arlington Crane bound by the provincial agreement and in breach of its hiring provisions. Arlington Crane was ordered to pay lost wages and cease and desist from violating the collective agreement.

Arlington Crane then amended its judicial review application to seek further an order that the Board decision be quashed and an interim order prohibiting the Board from assessing damages prior to the disposition of the judicial review application.

An application by the trade union, which had not been named as a respondent, to be added as a party was granted by the Court.

The judicial review application was heard and dismissed by the Court on October 31, 1986. The Court's decision dated December 8, 1986 held that the Board had not violated any *Charter* rights possessed by either Arlington Crane or the summonsed witness.

The *Charter* challenge to various sections of the *Labour Relations Act* was not pursued at the judicial review hearing, and is currently the subject of a separate action to which the Board is not a party.

Arlington Crane brought an application for leave to appeal the Divisional Court's decision, which was dismissed by the Court of Appeal on February 16, 1987.

Board of Education for the City of York,
Ottawa Board of Education
Supreme Court of Ontario, Divisional Court,
January 27, 1987; 58 O.R. (2d) 375

These two separate certification applications were dismissed in separate Board decisions, which were then judicially reviewed together. In each case, the issue was whether a group of teachers outside the regular school programme came within the definition of "teacher" set out in the *School Boards and Teachers Collective Negotiations Act* ("Bill 100"), so that by section 2(f) of the *Labour Relations Act* the latter did not apply to them and therefore the applications had to be dismissed.

The Ottawa application involved teachers in the continuing education night school programme. The majority of the Board held that the language of Bill 100 was sufficiently broad to embrace various teaching arrangements, including this one, so that the teachers were excluded from the application of the *Labour Relations Act* and therefore the certification application was dismissed.

The York application involved teachers employed to teach credit courses at the secondary school level to residents of Humewood House, a residence for troubled teenagers. A board of arbitration had found them to be not covered by a collective agreement entered into under Bill 100 and therefore the parties agreed that the teachers were not covered by that legislation. The Board, however, noting that the agreement of the parties and the arbitration decision could not confer upon it jurisdiction where it had none, considered the issue and held that these teachers came within the Bill 100 definition because they were qualified as teachers and employed to teach. The Board concluded that these employees were excluded from the application of the *Labour Relations Act* and accordingly the application was dismissed.

Each Board of Education sought judicial review of the decision affecting it. They alleged that the Board had erred in law in finding that the teachers came within Bill 100 and were excluded from the *Labour Relations Act*. The York Board set out as an additional ground for review a denial of freedom of association under the Charter, in that the decision had the effect of forcing the teachers to be represented by the Ontario Secondary School Teachers Federation, the union specified in Bill 100.

The two cases were heard together on May 6 to 8, 1986, and the Divisional Court issued its decision on January 27, 1987. The Court noted that the standard of review to be applied, given that the Board was not interpreting its constituent statute, was correctness, and the Court held that the Board came to the correct conclusion in each case and therefore both applications for judicial review were dismissed.

Both Ottawa and York have brought applications for leave to appeal the Divisional Court decision on the grounds that the Court erred in concluding that Bill 100 applied to these two groups of teachers. These applications are scheduled to be heard May 11, 1987.

Border Cities Wire & Iron Ltd.

**Supreme Court of Ontario, Divisional Court,
September 5, 1986; Unreported**

The union had referred a construction industry grievance to the Board respecting a failure by the employer to make payments to various union funds as required under the provincial agreement. A receiver-manager, which had been appointed under a debenture, had carried on Border Cities' business and honoured the provincial agreement to which Border Cities was a party; however, three months of payments owing from before the appointment remained outstanding. The Board held that the receiver-manager was bound by the collective agreement while the business continued, and therefore ordered that it pay the monies owing.

A request for reconsideration on the grounds that the receiver-manager had failed to attend the hearing was denied.

Border Cities and the receiver-manager sought judicial review of the Board's decision on the grounds that the Board had erred and exceeded its jurisdiction by granting priority to the union notwithstanding the debenture to the bank and by ignoring its own conflicting jurisprudence.

The Divisional Court dismissed the application for judicial review on September 5, 1986.

Brantwood Manor Nursing Homes Ltd.
Supreme Court of Ontario, Divisional Court,
June 3, 1986; Unreported
Ontario Court of Appeal,
September 15, 1986; Unreported

The union had complained of Brantwood Manor's laying off union employees and contracting its work out to two other companies, and had applied for declarations that Brantwood and each of the other two companies constituted one employer, bound by Brantwood's collective agreement with the union.

The Board found Brantwood Manor to have failed to bargain in good faith and interfered with the union and the rights of employees by refusing to recognize or bargain with the union's bargaining committee as it was composed. The Board also issued the two declarations of one employer, and in each case found violations of the collective agreement in assigning work to employees outside the bargaining unit and failing to abide by the union security and recognition agreements. The Board ordered reinstatement and compensation for the breaches of the collective agreement.

Brantwood sought judicial review of the Board's decision on the grounds that the Board had erred in interpreting and applying section 1(4) and exceeded its jurisdiction in finding the companies to be in breach of the collective agreement when there was no allegation of such breach before it. Brantwood also sought a stay of the Board's decision, which was granted by the Court in March 1986.

The application for judicial review was dismissed by the Divisional Court in its decision dated June 3, 1986. The Court found the Board's interpretation of section 1(4) to be reasonable and held that the common law right to contract out had not been overridden, as there was no true contracting out given Brantwood's degree of control over the other two companies. The Court also rejected an argument made by one of the companies, Med+Experts Inc., that it had not considered itself at risk of being found in breach of the collective agreement, noting that the issue of non-union hiring was before the Board in the context of unfair labour practices, and that the other companies should have known from the nature of the proceedings that any consequences to Brantwood might extend to them. The Court concluded that the other company had an adequate opportunity to address the issue of breach of the collective agreement, and was therefore not denied natural justice.

Brantwood Manor and Med + Expert sought leave to appeal the Divisional Court decision.

A motion to stay the Board's proceedings was settled between the parties, so that the Board consented to a court order dated August 21, 1986 effectively staying the Board decision.

On September 15, 1986, leave to appeal was granted by the Court of Appeal, and the appeal has been perfected.

Terrence Broome
Supreme Court of Ontario, Weekly Court,
February 26, 1987; Unreported

The Carpenters union sought a declaration that the businesses of Terrence Broome and his father, William Broome, were related to three Broome family companies already found by the Board to be one employer. The Board found that Terrence Broome was effectively continuing his bankrupt brother's business and that William Broome was involved in directing it, and concluded

that there was really one family business, carried on by different family members only nominally. The Board therefore declared Terrence and William Broome to be one employer together with the three other companies, and all bound by the provincial agreement.

Subsequently, the union referred a construction industry grievance to the Board alleging that Terrence Broome was hiring non-union workers. The Board found Terrence Broome to have breached the hiring provisions of the provincial agreement and awarded damages in excess of \$45,000 to the union in trust for the members who had been denied an opportunity to work.

Terrence Broome sought from the Weekly Court leave to make an expedited application for judicial review of both Board decisions to that Court and a stay of the decisions. The primary grounds for judicial review were that the Board had discriminated against him because of his status as a member of the Broome family and his association with family members, thereby violating the equality and freedom of association provisions of the *Charter*.

On February 26, 1987 the Weekly Court found that the applicant did not have a strong *prima facie* case in the main application, and therefore dismissed the stay.

The applications for leave and for the judicial review itself are scheduled to be heard by the Weekly Court on April 13, 1987.

Colautti Construction Ltd.
Supreme Court of Ontario, Divisional Court,
November 20, 1986; 86 CLLC ¶14,065; 2 A.C.W.S. (3d) 127

The operating engineers were seeking certification for Colautti Construction, and an employees association had intervened, seeking certification of itself. At the hearing, the employees association had as evidence receipts for dues paid, but no applications for membership. The association sought to call oral evidence to prove that applications had been received at the same time as the money was paid and receipts were issued. The Board, noting that oral evidence could only be used to substantiate ambiguous documents and not to establish membership, held that the association had not established representation rights and therefore had no status in the proceedings. The Board then declined a request that it refuse to hear the union's application on the grounds that it should be barred, as it had been filed before a prior application had been dismissed.

Colautti brought an application for judicial review, requesting that the Board's decision be quashed and the Board be prohibited from continuing with the union's application or that the Court order the Board to hear the certification application of the employees association. The grounds were breaches of natural justice and errors of law in refusing to bar the union's application and in excluding the membership evidence of the association.

The Board subsequently issued its decision certifying the union, having denied a request for a stay pending the judicial review. Colautti then amended its application to seek review also of the latter Board decision, and further requested a stay, and the employees association brought its own application for judicial review.

The stay application was dismissed by the Divisional Court in November, 1985.

The applications for judicial review, heard and reserved on May 14 to 16, 1986, were dismissed in the Divisional Court's majority decision dated November 20, 1986. The Court ruled that the failure to allow oral evidence was neither a denial of natural justice nor an error of law going to the Board's jurisdiction, nor was the failure to bar the union's application patently unreasonable. The dissenting judge would have found the denial of status to be a patently unreasonable interpretation of the *Labour Relations Act*.

Consolidated Bathurst Packaging Ltd.

Ontario Court of Appeal,

September 4, 1986; 56 O.R. (2d) 513; 31 D.L.R. (4th) 444; 21 Admin. L.R. 180; 86 CLLC ¶14,048; 39 A.C.W.S. (2d) 415

Supreme Court of Canada,

March 26, 1987; Unreported

The Board had issued a decision wherein it found that Consolidated Bathurst had violated section 15 of the *Labour Relations Act* by failing to bargain in good faith.

Consolidated Bathurst sought reconsideration by the Board of its decision on the ground that the Board had violated the principles of natural justice in that the panel which had heard the complaint had discussed a draft decision with the other members of the Board at a Full Board meeting. When the reconsideration was denied, Consolidated Bathurst applied for judicial review on the same ground.

The majority of the Divisional Court held in May 1985 that the Board's actions violated the fundamental principle that "he who hears must decide". The Court expressed concern that persons at the Full Board meeting who had not heard the case might have participated in the decision or at least have been seen to have done so. It therefore quashed the decision with costs against the Board and remitted the matter to the Board for its reconsideration.

Dissenting from the majority, one judge held that it was appropriate and even desirable for such discussions to take place as long as no one participated in the final decision except the panel who had heard the case. He would have dismissed the application.

The Board and the union sought and obtained leave to appeal in June, 1985.

In its judgement dated September 4, 1986 the Court of Appeal, adopting the reasoning of the dissenting judge of the Divisional Court, noted that it was important that Board panels consider the effect of their decisions upon the labour relations community, and that as part of their research on that issue, they ought to consult with other expert Board members. The Court held that such consultations are appropriate provided that if any new evidence was put forward or new ideas were raised, the parties would be recalled and allowed to give further submissions and provided that the final decision was made by only the panel which had heard the case. The Court of Appeal therefore overturned the Divisional Court majority decision and dismissed the judicial review application.

Consolidated Bathurst brought an application for leave to appeal to the Supreme Court of Canada, which was heard on December 8, 1986 and granted on March 26, 1987. This appeal is pending.

Great Lakes Fishermen and Allied Workers' Union

Supreme Court of Ontario, Weekly Court,

September 5, 1986; 56 O.R. (2d) 781; 31 D.L.R. (4th) 765; 1 A.C.W.S. (3d) 214

The union had filed numerous applications for certification with pre-hearing votes of fishermen on boats, and the Board had directed the votes.

Nine of the employers named in the certification applications then applied to Weekly Court for a determination of the constitutional validity of the Board's considering the certification application and its decision directing a vote and for a declaration that fishermen on boats came within the federal legislative jurisdiction. The applicants claimed that their businesses were part of "sea coast and inland fisheries" and therefore came within the federal legislative authority granted in

the *British North America Act*. The provincial government had no authority, they claimed, to legislate with respect to the industrial relations of persons engaged in an undertaking within the federal authority, particularly where the federal legislature had occupied the field by enacting the *Fisheries Act* and the *Canada Labour Code*.

On September 5, 1986, the Weekly Court dismissed the application as premature, since the Board itself had not yet heard evidence and ruled on the constitutional issue. The Court would not interfere with the expertise of the Board to establish its own jurisdiction, even with respect to constitutional issues.

The nine employers are bringing an appeal to the Court of Appeal to have the Weekly Court order set aside and a declaration made that their businesses are federal undertakings. The grounds are that the Court erred in finding the application to be premature, that there might be disputed facts upon which evidence must be led, and that no declaration can be granted where judicial review is available. This appeal is pending.

Meanwhile, the Board proceeded to consider the constitutional issue which the employers had also raised in their replies to the certification applications. In its decision dated December 9, 1986 the Board found that the businesses, being intra-provincial and not integral to Parliament's regulation of federal undertakings, were within the Board's jurisdiction and the certification applications should therefore proceed.

***The Ombudsman of Ontario*
Ontario Court of Appeal,
December 17, 1986; 2 A.C.W.S. (3d) 271**

The Board had refused requests by the Ombudsman for information respecting the merits of Board decisions on the ground that the Ombudsman had authority to investigate only administrative activities of the Board.

The Ombudsman sought a declaration from the Divisional Court that it had jurisdiction to investigate all activities of the Board, including the exercise of its quasi-judicial functions.

The Divisional Court granted the declaration on September 5, 1985, citing the Court of Appeal decision in *Re Ombudsman of Ontario and Health Disciplines Board of Ontario, et al.*, where it was determined that section 15 of the *Ombudsman Act* gave the Ombudsman the authority to investigate the merits of quasi-judicial decisions. The Court noted that the Ombudsman could not overrule Board decisions, but merely expose them to political scrutiny.

The Board sought and obtained in March, 1986 leave to appeal the Divisional Court decision to the Court of Appeal.

On December 17, 1986 the Court of Appeal upheld the Divisional Court decision, confirming that the *Health Disciplines Board* case had decided the issue, and dismissed the appeal with costs against the Board. In response to the Board's arguments that different considerations had to apply in the labour relations context, the Court stated that in the face of the clear wording of the *Ombudsman Act*, only the legislature, and not the courts, could exempt particular tribunals from investigation of the merits of their decisions. The Court did confirm that Board members and employees would not be obliged to provide information to the Ombudsman if doing so would breach any of the non-disclosure provisions of the *Labour Relations Act*.

The Board's application for leave to appeal the Court of Appeal decision to the Supreme Court of Canada is scheduled to be heard May 5, 1987.

Plaza Fiberglas Manufacturing Ltd.

Supreme Court of Ontario, Divisional Court,

April 17, 1986; 86 CLLC ¶14,031; 37 A.C.W.S. (2d) 68

The union had applied for certification and a single employer declaration respecting Plaza Fiberglas and another company and complained of intimidation by the employer. When the employer refused to post notices to the employees of these proceedings, the Board authorized a Labour Relations Officer to enter and post the notices. Plaza Fiberglas then refused to allow the Labour Relations Officer on the premises, and when he finally gained entry with the assistance of a Sheriff's Officer, the notice had not been posted.

When the matter came on for hearing, Plaza Fiberglas raised a preliminary objection that the Board had lost jurisdiction to deal with these matters, as its actions gave the appearance of a reasonable apprehension of bias in favour of the union. The Board in its decision rejected these objections and directed the employer to make filings and to post, and authorized two Labour Relations Officers to check that the postings were made and maintained.

Plaza Fiberglas and the other company brought an application for judicial review seeking to quash the Board's decision and prohibit it from proceeding further. An application for a stay of the Board's order was dismissed and the main application was withdrawn as part of a settlement in which both companies consented to the section 1(4) declaration and the certification.

Meanwhile, the union requested that the Board state a case to Divisional Court respecting the employer's failure to comply with the Board's directions, and the Board decided to consent to state the case, seeking that Plaza Fiberglas and the related company be punished as though they had been in contempt of court.

The Divisional Court in its decision dated April 17, 1986 found that the employer's course of action was intended to delay and frustrate the certification process. While a substantial fine was appropriate as a general deterrent, there were mitigating factors, including the acknowledgement of guilt, albeit at the last minute, and a term of the settlement (referred to above) wherein the union agreed to seek no greater penalty than a fine of \$10,000 with respect to the stated case. The Court ordered Plaza Fiberglas and the related company to pay \$4,000 each to the Supreme Court of Ontario.

Ports International Ltd.

Supreme Court of Ontario, Divisional Court,

April 24, 1986; 54 O.R. (2d) 650; 27 D.L.R. (4th) 247; 86 CLLC ¶14,036; 36 A.C.W.S. (2d) 432

Ontario Court of Appeal,

June 23, 1986; Unreported

In this certification application a petition was filed which had been originated by "working supervisors", some of whom had pressured employees to sign the petition. The Board found that it was not satisfied that the petition was voluntary, and therefore did not take it into account and certified the union on the basis of the membership evidence.

Applications for judicial review were brought by both the petitioners and Ports on numerous grounds, including: denial of natural justice by depriving the petitioners of the opportunity to oppose the application; errors of law, including failing to determine whether the petitioners actually signed voluntarily and finding a special relationship between the originators of the petition and management absent any evidence; and violations of the freedoms of association and of expression and the equality provisions of the *Charter*.

Ports then brought an application for a stay of the Board's decision, which the Divisional Court dismissed as disclosing no strong *prima facie* case.

The two applications for judicial review were heard together, and on April 24, 1986 the Divisional Court issued its decision dismissing both applications. The Court held that the Board was entitled to conclude that there might be a perception of management involvement without any actual evidence of perception, and that therefore failing to invite submissions on the issue of actual perception was not a denial of natural justice. None of the *Charter* arguments succeeded. The Court ruled that the right to freedom of expression does not protect against all adverse effects of expressing oneself, and the effect here was prescribed by law in any event, and that freedom of association was protected, not violated, by the Board's ensuring that the petition was voluntary, and that there had been no denial of equal treatment.

Both Ports and the petitioners sought leave to appeal the Divisional Court decision, and were denied leave by the Court of Appeal on June 23, 1986.

Michael Ross

**Supreme Court of Ontario, Divisional Court,
April 16, 1986; Unreported**

Michael Ross filed a complaint of bad faith representation against the union respecting its failure to represent him in a grievance of his discharge. The Board refused to hear evidence or argument on a number of particulars, either because of delay or because they did not come within section 68, and also refused Ross's request for an adjournment to retain counsel since he had had ample opportunity to do so already. The Board found that there was no evidence that the union's decision not to proceed to arbitration respecting the grievance was arbitrary, discriminatory or motivated by bad faith, and therefore dismissed the complaint.

Ross applied for judicial review, seeking that the decision be set aside and that either an arbitration be ordered or the matter be remitted to the Board. Ross alleged that the Board had erred in interpreting and applying section 68 and that its decision was patently unreasonable.

The application for judicial review was dismissed by the Divisional Court on April 16, 1986. The Court held that the union was not necessarily discriminating and therefore the Board's decision was not patently unreasonable.

Shortly thereafter, Ross filed a notice of motion for leave to appeal the Divisional Court decision to the Court of Appeal. This application is pending.

Windsor Western Hospital

**Supreme Court of Ontario, Divisional Court,
August 5, 1986; 56 O.R. (2d) 297; 30 D.L.R. (4th) 573; 22 Admin. L.R. 126; 86 CLLC ¶14,051
Ontario Court of Appeal
February 16, 1987; Unreported**

The Board had issued a decision finding that because a complainant employee had been forced to resign at a meeting with her employer in which she had had no representation from her union, the employer and union had both violated the *Labour Relations Act*. A grievance brought by the union prior to the Board hearing had been dismissed with no hearing on the merits because the arbitrators had determined that the resignation had been voluntary and that therefore they had no jurisdiction to hear the grievance. The Board, in considering the effect of the dismissal of the grievance, determined that under its section 89 remedial powers it could override a final and binding arbitration award, although it should not do so lightly. It held that as the Board was aware

of violations which the arbitrators had not considered, it was not bound by the arbitration award. By way of remedy to the violations the Board directed that the parties recommence an arbitration on the merits as to whether the employer had just cause for termination of the complainant.

Windsor Western Hospital sought judicial review of the Board decision on the ground that the Board should not have overruled the arbitration award.

The majority of the Divisional Court in its judgment of August 5, 1986 held that the broad remedial powers given under section 89 did not authorize the Board to override an arbitration award which was final and binding not only under the terms of the collective agreement, but also under section 44 of the *Labour Relations Act*. It concluded that the Board therefore had no jurisdiction to order recommencement of a grievance arbitration which had been previously dismissed. The majority ordered that the decision of the Board be set aside except with respect to the complaint against the union. Therefore, while the finding of a violation against the union was upheld, the entire remedy was set aside, as was apparently the finding of a violation against the employer.

In a dissenting opinion, one judge agreed that the Board could not order a recommencement of the arbitration; however, he would have found that the Board's remedy did not in fact amount to a recommencement of the arbitration, despite the use of such terminology by the Board. He would have found that the Board was merely directing the trial of an issue with respect to just cause so that it would have the information which it would require in order to determine the appropriate remedy. He would therefore have dismissed the judicial review application.

The employee brought an application seeking leave to appeal to the Court of Appeal, which was heard and dismissed on February 16, 1987.

VII CASELOAD

In fiscal year 1986-87, the Board received a total of 3,577 applications and complaints, an increase of 11 percent over the intake of 3,236 cases in 1985-86. Of the three major categories of cases that are brought to the Board under the Act, applications for certification of trade unions as bargaining agents and complaints of contravention of the Act each increased by less than one percent over last year, and referrals of grievances under construction industry collective agreements increased by 16 percent. The total of all other types of cases increased by 34 percent. (Tables 1 and 2).

In addition to the cases received, 1,009 were carried over from the previous year, for a total caseload of 4,586 in 1986-87. Of the total caseload, 3,371, or 74 percent, were disposed of during the year; proceedings in 313 were adjourned sine die* (without a fixed date for further action) at the request of the parties; and 902 were pending in various stages of processing at March 31, 1987.

The total number of cases processed during the year produced an average workload of 306 cases for the Board's full-time chair and vice-chair, and the total disposition represented an average output of 225 cases.

Labour Relations Officer Activity

In 1986-87, the Board's labour relations officers were assigned a total of 2,186 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 48 percent of the Board's total caseload, and included 601 certification applications, 39 cases concerning the status of individuals as employees under the Act, 705 complaints of alleged contraventions of the Act, 762 grievances under construction industry collective agreements, and 79 complaints under the Occupational Health and Safety Act. (Table 3).

The labour relations officers completed activity in 1,782 of the assignments, obtaining settlements in 1,589, or 89 percent. They referred 193 cases to the Board for decisions; proceedings were adjourned sine die in 205 cases; and settlement efforts were continuing in the remaining 199 cases at March 31, 1987.

Labour relations officers were also successful in having hearings waived by the parties in 327, or 80 percent, of 411 certification applications assigned for this purpose.

Representation Votes

In 1986-87, the Board's returning officers conducted a total of 262 representation votes among employees in one or more bargaining units. Of these votes, 252 were concluded in cases that were disposed of during the year, and in 10 a final decision closing the case had not been rendered by the Board by March 31, 1987. Of the 262 votes concluded, 196 involved certification applications, 64 were held in applications for termination of existing bargaining rights, and 2 were taken in successor employer applications. (Table 5).

* The Board regards sine die cases as disposed of, although they are kept on docket for one year.

Of the certification votes, 154 involved a single union on the ballot; 41 involved two unions, and one involved three unions. Of the two-union and three-union votes, 98 percent entailed attempts to replace incumbent bargaining agents.

A total of 17,432 employees were eligible to vote in the 262 elections that were concluded, of whom 13,248, or 76 percent, cast ballots. Of those who participated, 49 percent voted in favour of union representation. In the 196 certification elections, 73 percent of the eligible voters cast ballots, with 54 percent of those who participated voting for union representation. In the 154 elections that involved a single union, 68 percent of the eligible voters cast ballots, of whom 52 percent voted for union representation. In the two-union elections 85 percent of the eligible voters cast ballots, with 59 percent of the participants voting for union representation. In the election involving three unions, 97 percent of the eligible voters cast ballots for union representation.

In the 64 votes in applications for termination of bargaining rights, 92 percent of the eligible voters cast ballots, with only 27 percent of those who participated voting for the incumbent unions. Of the 216 employees who cast ballots in the elections held in successor employer cases, 118 or 55 percent, voted for union representation.

Last Offer Votes

In addition to taking votes ordered in its cases, the Board's Registrar was requested by the Minister to conduct votes among employees on employers' last offer for settlement of a collective agreement dispute under section 40(1) of the Act. Although the Board is not responsible for the administration of votes under that section, the Board's Registrar and field staff are used to conduct these votes because of their expertise and experience in conducting representation votes under the Act.

Of the 21 requests dealt with by the Board during the fiscal year, votes were conducted in 15 situations, settlements were reached in 4 cases before a vote was taken, and 2 cases were withdrawn.

In the 15 votes held, employees accepted the employer's offer in 5 cases by 143 votes in favour to 38 against, and rejected the offer in 10 cases by 300 votes against to 125 in favour.

Hearings

The Board held a total of 1,476 hearings and continuation of hearings in 1,667, or 36 percent of the 4,586 cases processed during the fiscal year. This was an increase of 170 sittings from the number held in 1985-86. Seventy-eight of the hearings were conducted by vice-chair sitting alone, compared with 79 in 1985-86.

Processing Time

Table 7 provides statistics on the time taken by the Board to process the 3,371 cases disposed of in 1986-87. Information is shown separately for the three major categories of cases handled by the Board — certification applications, complaints of contraventions of the Act, and referrals of grievances under construction industry collective agreements — and for the other categories combined.

A median of 50 days was taken to proceed from filing to disposition for the 3,371 cases that were completed in 1986-87, compared with 43 days in 1985-86. Certification applications were processed in a median of 36 days, compared with 29 in 1985-86; complaints of contravention of the Act took 71 days, compared with 57 in 1985-86; and referrals of construction industry grievances

required 15 days, the same as in 1985-86. The median time for the total of all other cases increased to 106 days from 64 in 1985-86.

More than 63 percent of all dispositions were accomplished in 84 days (3 months) or less, compared with 76 percent for certification applications, 56 percent for complaints of contraventions of the Act, 83 percent for referrals of construction industry grievances, and 40 percent for the total of all other types of cases. The number of cases requiring more than 168 days (6 months) to complete rose to 790 from 411 in 1985-86.

Certification of Bargaining Agents

In 1986-87, the Board received 1,034 applications for certification of trade unions as bargaining agents of employees, an increase of 9 cases over 1985-86. (Tables 1 and 2).

The applications were filed by 132 trade unions, including 69 employee associations. Fourteen of the unions, each with more than 20 applications, accounted for 74 percent of the total filings: Labourers (156 cases), Carpenters (57 cases), Public Employees (CUPE) (80 cases), Food and Commercial Workers (56 cases), Service Employees International (54 cases), International Operating Engineers (72 cases), Teamsters (36 cases), United Steelworkers (61 cases), Canadian Auto Workers (44 cases), Hotel Employees (22 cases), Ontario Public Service (37 cases), Ontario Nurses Association (37 cases), Textile Processors (23 cases) and Plumbers (25 cases). In contrast, 73 percent of the unions filed fewer than 5 applications each, with the majority making just one application. These unions together accounted for 9 percent of the total certification filings. (Table 8).

Table 9 gives the industrial distribution of the certification applications received and disposed of during the year. Non-manufacturing industries accounted for 73 percent of the applications received, concentrated in construction (287 cases), health and welfare services (147 cases), accommodation and food services (57 cases), retail trade (38 cases), education and related services (49 cases), wholesale trade (25 cases), and transportation (31 cases). These seven groups comprised 85 percent of the total non-manufacturing applications. Of the 285 applications involving establishments in manufacturing industries, 70 percent were in eight groups: food and beverage (55 cases), metal fabricating (32 cases), rubber and plastic products (24 cases), non-metallic minerals (16 cases), transportation equipment (17 cases), machinery (24 cases), furniture and fixtures (16 cases) and other manufacturing (16 cases).

In addition to the applications received, 261 cases were carried over from last year, making a total certification caseload of 1,295 in 1986-87. Of the total caseload, 1,006 were disposed of, proceedings were adjourned in 15 cases, and 274 cases were pending at March 31, 1987. Of the 1,006 dispositions, certification was granted in 655 cases including 49 in which interim certificates were issued under section 6(2) of the Act, and 11 that were certified under section 8; 200 cases were dismissed; proceedings were terminated in 6 cases; and 145 cases were withdrawn. The certified cases represented 65 percent of the total dispositions.

Of the 861 applications that were either certified, dismissed or terminated, final decisions in 178 cases were based on the results of representation votes. Of the 188 votes conducted, 147 involved a single union on the ballot; 40 were held between two unions; and one involved three unions. Applicants won in 98 of the votes and lost in the other 90. (Table 6).

A total of 15,268 employees were eligible to vote in the 188 elections, of whom 11,025 or 72 percent cast ballots. In the 98 votes that were won and resulted in certification, 5,222 or 61 percent of the 8,584 employees eligible to vote cast ballots, and of these voters 4,203 or 81 percent favoured union representation. In the 90 elections that were lost and resulted in dismissals, 5,803

or 87 percent of the 6,684 eligible employees participated, and of these only 35 percent voted for union representation.

Size and Composition of Bargaining Units: Small units continued to be the predominant pattern of union organizing efforts through the certification process in 1986-87. The average size of the bargaining units in the 655 applications that were certified was 36 employees, compared with 33 in 1985-86. Units in construction certifications averaged 8 employees, compared with 7 in 1985-86; and in non-construction certifications they averaged 44 employees, compared with 38 in 1985-86. Seventy-four percent of the total certifications involved units of fewer than 40 employees, and about 37 percent applied to units of fewer than 10 employees. The total number of employees covered by the 655 certified cases increased to 23,536 from 22,937 in 1985-86. (Table 10).

Of the employees covered by the applications certified, 8,166 or 35 percent, were in bargaining units that comprised full-time employees or in units that excluded employees working 24 hours or less a week. Units composed of employees working 24 hours or less a week accounted for 7,024 employees, found mostly in education and health and welfare services and represented mainly by teachers unions and the Ontario Nurses Association. Full-time and part-time employees were represented in units covering 8,346 employees, including units that did not specifically exclude employees working 24 hours or less a week. (Tables 12 and 13).

More than 60 percent of the employees, 14,367, were employed in production, service and related occupations; and 1,002 were in office, clerical and technical occupations, mainly health and welfare services. Professional employees, found mostly in education and health and welfare services, accounted for 5,257 employees; a small number, 415 employees, were in sales classifications in retail trade; and 2,495 were in units that included employees in two or more classifications. (Tables 14 and 15).

Disposition Time: A median time of 29 calendar days was required to complete the 655 certified cases from receipt to disposition. For non-construction certifications the median time was 29 days, and for construction certifications the median time was 22 days. (Table 11).

Seventy-nine percent of the 655 certified cases were disposed of in 84 days (3 months) or less, 72 percent took 56 days (2 months) or less, 40 percent required 28 days (one month) or less, and 18 percent were processed in 21 days (3 weeks) or less. Eighty cases required longer than 168 days (6 months) to process, compared with 79 in 1985-86.

Termination of Bargaining Rights

In 1986-87, the Board received 171 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions. In addition, 64 cases were carried over from 1985-86.

Of the total cases processed, bargaining rights were terminated in 100 cases, 50 cases were dismissed, 27 were withdrawn, 3 cases were adjourned sine die, proceedings were terminated in 3 cases, and 41 cases were pending on March 31, 1987.

Unions lost the right to represent 2,973 employees in the 100 cases in which termination was granted, but retained bargaining rights for 2,123 employees in the 77 cases that were either dismissed or withdrawn.

Of the 150 cases that were either granted or dismissed, dispositions in 63 were based on the results of representation votes. A total of 2,614 employees were eligible to vote in the 63 elections that were held, of whom 2,407 or 92 percent cast ballots. Of those who cast ballots, 650 voted for continued representation by unions and 1,757 voted against. (Table 6).

Declaration of Successor Trade Union

In 1986-87, the Board dealt with 12 applications for declarations under section 62 of the Act, on the bargaining rights of successor trade unions resulting from a merger or transfer of jurisdiction, compared to 40 in 1985-86.

Affirmative declarations were issued by the Board in 6 cases, 1 case was withdrawn, 1 case was dismissed and 4 cases were pending at March 31, 1987.

Declaration of Successor or Common Employer

In 1986-87, the Board dealt with 430 applications for declarations under section 63 of the Act, on the bargaining rights of trade unions at a successor employer resulting from a business sale; or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the Board in 20 cases, 291 cases were either settled or withdrawn by the parties, 15 cases were dismissed, proceedings were terminated or adjourned sine die in 28 cases, and 76 cases were pending at March 31, 1987.

Accreditation of Employer Organizations

Five applications were processed under sections 125 through 127 of the Act for accreditation of employer organizations as bargaining agents of employers in the construction industry. Two cases were granted, affecting 128 firms employing 723 workers; and three cases were pending at March 31, 1987.

Declaration and Direction of Unlawful Strike

In 1986-87, the Board dealt with two applications seeking a declaration under section 92 against an alleged unlawful strike by employees in the construction industry. One case was settled, and proceedings were adjourned sine die in one case.

Nineteen applications were dealt with seeking directions under section 92 against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 5 cases, 1 case was dismissed, 5 were withdrawn or settled, proceedings were terminated or adjourned sine die in 7 cases, and 1 case was pending at March 31, 1987.

Forty applications were also processed, seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. A direction was issued in 1 case, 3 cases were dismissed, 20 were withdrawn or settled, proceedings were terminated or adjourned sine die in 12 cases, and 4 were pending at March 31, 1987.

Declaration and Direction of Unlawful Lock-out

Three applications were processed in 1986-87, seeking declarations under section 93 of the Act against alleged unlawful lock-out by construction employers. Proceedings were terminated in 2 cases and one was pending at March 31, 1987.

Ten applications were also processed in seeking directions under section 93 of the Act against alleged unlawful lock-outs by non-construction employers. Directions were issued in 2 cases, 4 cases were dismissed, 3 cases were settled and proceedings were adjourned sine die in one case.

Consent to Prosecute

In 1986-87, the Board dealt with 11 applications under section 101 of the Act, requesting consent to institute prosecution in court against trade unions and employers for alleged commission of offences under the Act.

Of the 11 applications processed, which included three carried over from the previous year, 8 were disposed of, one was adjourned sine die and two were pending at March 31, 1987. Of the cases disposed of, one case was granted, three cases were dismissed and four were settled or withdrawn.

Complaints of Contravention of Act

Complaints alleging contraventions of the Act may be filed with the Board for processing under section 89 of the Act. In handling these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a labour relations officer.

In 1986-87, the Board received 862 complaints under this section, an increase of 7 cases over the 855 filed in 1985-86. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees for union activity in violation of sections 64 and 66 of the Act, illegal changes in wages and working conditions contrary to section 79, and failure to bargain in good faith under section 15. These charges were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

In addition to the complaints received, 305 cases were carried over from 1985-86. Of the 1,167 total processed, 891 was disposed of, proceedings were adjourned sine die in 53 cases, and 223 cases were pending at March 31, 1987.

In 702 or 79 percent of the 891 dispositions, voluntary settlements and withdrawals of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 51 cases, 119 cases were dismissed, and proceedings were terminated in the remaining 19 cases.

In the cases settled by labour relations officers and those in which Board awards were made, compensation amounting to about \$7,759,839* was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 51 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay compensation to 97 employees for wages and benefits lost in a specified period, and 68 of these employees were also ordered reinstated.

In addition, employers in 18 cases were ordered to post a Board notice of the employees' rights under the Act, and cease and desist directions were issued to employers in 11 other cases.

Construction Industry Grievances

Grievances over alleged violation of the provisions of a collective agreement in the construction industry may be referred to the Board for resolution under section 124 of the Act. As with complaints of contraventions of the Act, the Board encourages voluntary settlement of these cases by the parties involved, with the assistance of a labour relations officer.

* Includes a \$7,000,000 endorsement by the Board as settlement for 263 cases involving sections 63 1(4) and 89.

In 1986-87, the Board received 865 cases under this section, an increase of 16 percent from the 745 filed in 1985-86. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and hiring arrangements in the collective agreement.

In addition to the cases received, 126 were carried over from 1985-86. Of the total 991 processed, 664 were disposed of, proceedings were adjourned sine die in 184 cases, and 143 cases were pending at March 31, 1987.

In 589 or 89 percent of the 664 dispositions, voluntary settlements and withdrawals of the grievance were obtained by labour relations officers, awards were made by the Board in 45 cases, 15 cases were dismissed, and proceedings were terminated in the remaining 15 cases. (Table 4).

Payments totalling about \$1,319,044 were recovered for unions and employees in the cases settled by labour relations officers and those in which Board awards were made.

MISCELLANEOUS APPLICATIONS AND COMPLAINTS

Right of Access

In 1986-87, the Board dealt with fourteen applications in which the union sought access to the employer's property under section 11 of the Act. Access was granted in one case and the other 13 cases were pending at March 31, 1987.

Religious Exemption

Twenty applications were processed under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Exemptions were granted in seven cases, 12 cases were dismissed and one case was withdrawn.

Early Termination of Collective Agreements

Sixteen applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 12 cases, one case was settled and three were pending at March 31, 1987.

Union Financial Statements

Seven complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements of the union's affairs. Two cases were dismissed, one case was settled and proceedings were terminated in four cases.

Jurisdictional Disputes

Forty-six complaints were dealt with under section 91 of the Act, involving union work jurisdiction. Two cases were dismissed, seven cases were settled or withdrawn, proceedings were terminated or adjourned sine die in nine cases, and 28 cases were pending at March 31, 1987.

Determination of Employee Status

The Board dealt with 110 applications under section 106(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Thirty-eight cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Determinations were made by

the Board in 10 cases, in which 19 of the 30 persons in dispute were found to be employees under the Act. Seven cases were dismissed, proceedings were terminated or adjourned sine die in 8 cases, and 47 cases were pending at March 31, 1987.

Referrals by Minister of Labour

In 1986-87, the Board dealt with 5 cases referred by the Minister under section 107 of the Act for opinions or questions related to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under sections 44 or 45. Proceedings were terminated in 2 cases, one case was settled and 2 cases were pending at March 31, 1987.

One case was referred to the Board by the Minister under section 139(4) of the Act, concerning the designations of the employee and employer agencies in a bargaining relationship in the industrial, commercial and institutional sector of the construction industry. The case was pending at March 31, 1987.

Trusteeship Reports

Three statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

First Agreement Arbitration

On May 26, 1986, section 40a was added to the *Labour Relations Act* to enable first collective agreements to be settled by arbitration. The process involves two stages: the parties must first apply to the Board for a direction to arbitrate; then if the direction is granted, they may choose to have the settlement arbitrated by the Board or privately by a board of arbitration.

Up to the end of the fiscal year, the Board received 34 applications for directions to settle first agreements by arbitration. Directions were issued in 4 cases, 4 cases were dismissed, 18 cases were settled or withdrawn, proceedings were terminated or adjourned sine die in 4 cases, and 4 cases were pending at March 31, 1987. (Table 1).

Of the 4 cases in which directions were issued, the Board was requested to arbitrate a settlement of the first agreement in 3 cases. The arbitrations were completed and collective agreements awarded in all 3 cases by March 31, 1987. (Table 1).

Occupational Health and Safety Act

In 1986-87, the Board received 85 complaints under section 24 of the Occupational Health and Safety Act alleging wrongful discipline or discharge of employees for acting in compliance with this Act. Twenty-five cases were carried over from 1985-86.

Of the total 110 cases processed, 56 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Eight cases were granted and 10 were dismissed by the Board, proceedings were terminated or adjourned sine die in 4 cases, and the remaining 32 were pending at March 31, 1987.

Colleges Collective Bargaining Act

Ten complaints were dealt with under section 78 of the *Colleges Collective Bargaining Act*, alleging contraventions of the Act. Two cases were settled and 3 were dismissed by the Board, proceedings were adjourned sine die in two cases and 5 were pending at March 31, 1987.

One application was dealt with under section 82 for a decision on the status of individuals as employees under the Act. The case was settled.

Statistics on the cases under the *Colleges Collective Bargaining Act* dealt with by the Board are included in Table 1.

VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

The Ontario Labour Relations Board Reports: A monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

A Guide to the Labour Relations Act: A booklet explaining in layman's terms the provisions of the *Labour Relations Act* and the Board's practices. This publication is revised periodically to reflect current law and Board practices. The Guide is also available in French.

Monthly Highlights: A publication in leaflet form containing scope notes of significant Board decisions on a monthly basis. This publication also contains Board notices of interest to the industrial relations community and information relating to new appointments and other internal developments.

Pamphlets: To date the Board has published three pamphlets. Two of these, "Rights of Employees, Employers and Trade Unions" and "Certification by the Ontario Labour Relations Board", are available in English, French, Italian and Portuguese. The third pamphlet entitled "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board", describes unfair labour practice proceedings before the Board and also contains useful instructions in filling out Form 58, which is used to institute proceedings.

All of the Board's publications may be obtained by calling, writing, or visiting the Board's offices. The Ontario Labour Relations Board Reports is available on annual subscriptions, (January — December issues inclusive) presently priced at \$45.00. Individual copies of the report may be purchased at the Government of Ontario Bookstore. Order forms for subscriptions are available from the Board.

IX STAFF AND BUDGET

At the end of the fiscal year 1986-87, the Board employed a total of 119 persons on a full-time basis. The Board has two types of employees. The Chair, Alternate Chair, Vice-Chairs and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil service appointees.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$6,850,500.

X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1986-87.

Table 1	Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1986-87
Table 2	Applications and Complaints Received and Disposed of, Fiscal Years 1982-83 to 1986-87
Table 3	Labour Relations Officer Activity in Cases Processed, Fiscal Year 1986-87
Table 4	Labour Relations Officer Settlements in Cases Disposed of, Fiscal Year 1986-87
Table 5	Results of Representation Votes Conducted, Fiscal Year 1986-87
Table 6	Results of Representation Votes in Cases Disposed of, Fiscal Year 1986-87
Table 7	Time Required to Process Applications and Complaints Disposed of, by Major Type of Case, Fiscal Year 1986-87
Table 8	Union Distribution of Certification Applications Received and Disposed of, Fiscal Year 1986-87
Table 9	Industry Distribution of Certification Applications Received and Disposed of, Fiscal Year 1986-87
Table 10	Employees Covered by Certification Applications Granted, Fiscal Year 1986-87
Table 11	Time Required to Process Certification Applications Granted, Fiscal Year 1986-87
Table 12	Employment Status of Employees in Bargaining Units Certified, by Industry, Fiscal Year 1986-87
Table 13	Employment Status of Employees in Bargaining Units Certified, by Union, Fiscal Year 1986-87
Table 14	Occupational Groups in Bargaining Units Certified, by Industry, Fiscal Year 1986-87
Table 15	Occupational Groups in Bargaining Units Certified, by Union, Fiscal Year 1986-87

Table 1

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1986-87

Type of Case	Caseload			Disposed of, Fiscal Year 1986-87							Pending March 31, 1987
	Total	Pending April 1, 86	Received Fiscal Year 1986-87	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die	
Total	4,586	1,009	3,577	3,371	933	448	68	693	1,229	313	902
Certification of Bargaining Agents	1,295	261	1,034	1,006	655	200	6	145	—	15	274
Declaration of Termination of Bargaining Rights	235	64	171	191	100	50	3	27	11	3	41
Declaration of Successor Trade Union	12	1	11	8	6	1	—	1	—	—	4
Declaration of Successor Employer or Common Employer Status	430	143	287	329	20	15	3	35	256	25	76
Accreditation	5	2	3	2	2	—	—	—	—	—	3
Declaration of Unlawful Strike	2	—	2	1	—	—	—	—	1	1	—
Declaration of Unlawful Lockout	3	1	2	2	—	—	2	—	—	—	1
Direction respecting Unlawful Strike	59	4	55	40	6	4	5	11	14	14	5
Direction respecting Unlawful Lockout	10	2	8	9	2	4	—	—	3	1	—
Consent to Prosecute	11	3	8	8	1	3	—	1	3	1	2
Contravention of Act	1,167	305	862	891	51	119	19	219	483	53	223
Right of Access	14	—	14	1	1	—	—	—	—	—	13
Exemption from Union Security Provision in Collective Agreement	20	3	17	20	7	12	—	1	—	—	—
Early Termination of Collective Agreement	16	5	11	13	12	—	—	—	1	—	3
Trade Union Financial Statement	7	4	3	7	—	2	4	—	1	—	—
Jurisdictional Dispute	46	23	23	12	—	2	3	6	1	6	28

(Cont'd)

Table 1 (Cont'd)

Total Applications and Complaints Received, Disposed of and Pending
Fiscal Year 1986-87

Type of Case	Caseload		Disposed of, Fiscal Year 1986-87									Pending March 31, 1987
	Total	Pending April 1, 86	Received Fiscal Year 1986-87	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die		
Total	4,586	1,009	3,577	3,371	933	448	68	693	1,229	313	902	
Referral on Employee Status	110	36	74	58	10	7	3	10	28	5	47	
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	5	—	5	3	—	—	2	—	1	—	2	
Referral of Construction Industry Grievance	991	126	865	664	45	15	15	220	369	184	143	
Referral from Minister on Construction Bargaining Agency	1	1	—	—	—	—	—	—	—	—	1	
Complaint under Occupational Health and Safety Act	110	25	85	75	8	10	1	13	43	3	32	
First Agreement Arbitration Direction	34	—	34	28	4	4	2	4	14	2	4	
First Agreement Arbitration Proceedings	3	—	3	3	3	—	—	—	—	—	—	

* Includes cases in which a request was granted or a determination made by the Board.

Table 2

Applications and Complaints Received and Disposed of
Fiscal Years 1982-83 to 1986-87

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1982-83	1983-84	1984-85	1985-86	1986-87	Total	1982-83	1983-84	1984-85	1985-86	1986-87
Total	16,219	2,762	3,135	3,509	3,236	3,577	14,391	2,445	2,797	2,866	2,912	3,371
Certification of bargaining agents	4,836	758	871	1,148	1,025	1,034	4,609	767	817	985	1,034	1,006
Declaration of termination of bargaining rights	720	115	124	155	155	171	704	120	119	139	135	191
Declaration of successor trade union or employer	525	47	22	193	88	175	476	51	19	131	85	190
Declaration of common employer status	559	41	174	104	117	123	435	31	118	58	81	147
Accreditation	8	1	1	3	—	3	7	3	—	1	1	2
Declaration of unlawful strike or lockout	22	3	7	2	6	4	19	2	3	6	5	3
Directions respecting unlawful strike or lockout	293	76	63	39	52	63	224	61	47	31	36	49
Consent to prosecute	63	18	15	11	11	8	56	17	12	11	8	8
Contravention of Act	4,233	724	872	920	855	862	3,839	674	787	729	758	891
Referral of construction industry grievance	4,016	831	824	751	745	865	3,207	577	732	620	614	664
Miscellaneous	907	148	162	183	182	232	784	142	143	155	155	189
First Agreement Arbitration Direction	34	—	—	—	—	34	28	—	—	—	—	28
First Agreement Arbitration Proceedings	3	—	—	—	—	3	3	—	—	—	—	3

Table 3

Labour Relations Officer Activity in Cases Processed*
Fiscal Year 1986-87

Type of Case	Total Cases Assigned	Cases in Which Activity Completed			Referred to Board	Sine Die	Pending
		Total	Settled				
			Number	Percent			
Total	2,186	1,782	1,589	89.2	193	205	199
Certification	601	593	561	94.6	32	3	5
Interim certificate	40	34	34	100.0	—	3	3
Pre-hearing application	95	93	71	76.3	22	—	2
Other application	466	466	456	97.9	10	—	—
Contravention of Act	705	525	438	83.4	87	31	149
Construction industry grievance	762	582	522	89.7	60	163	17
Employee status	39	33	24	72.7	9	5	1
Occupational Health and Safety Act	79	49	44	89.8	5	3	27

* Includes all cases assigned to labour relations officers, which may or may not have been disposed of by the end of the year.

Table 4

Labour Relations Officer Settlements in Cases Disposed of*
Fiscal Year 1986-87

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
Total	1,688	1,385	82.0
Contravention of Act	891	702	78.7
Construction industry grievance	664	589	88.7
Employee status	58	38	65.5
Occupational Health and Safety Act	75	56	74.6

* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.

Table 5

Results of Representation Votes Conducted*
Fiscal Year 1986-87

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	
			Total	In Favour of Unions
Total	262	17,432	13,248	6,542
Certification	196	14,581	10,627	5,775
Pre-hearing cases				
One union	69	6,105	3,567	1,975
Two unions	28	3,751	3,177	1,836
Three unions	1	61	59	59
Construction cases				
One union	5	62	55	12
Two unions	3	29	29	27
Regular cases				
One union	80	4,233	3,451	1,660
Two unions	10	340	289	206
Termination of Bargaining Rights	64	2,612	2,405	649
Successor Employer	2	239	216	118

* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

Table 6

Results of Representation Votes in Cases Disposed of* Fiscal Year 1986-87

Type of Case	Number of Votes			Eligible Votes			All Ballots Cast			Ballots Cast in Favour of Unions		
	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
Total	252	103	149	17,913	8,746	9,167	13,462	5,372	8,090	6,894	4,299	2,595
Certification	188	98	90	15,268	8,584	6,684	11,025	5,222	5,803	6,220	4,203	2,017
Pre-hearing cases												
One union	57	39	18	6,689	4,198	2,491	4,005	1,932	2,073	2,311	1,605	706
Two unions	27	20	7	3,444	2,108	1,336	2,890	1,700	1,190	1,768	1,419	349
Three unions	1	1	—	61	61	—	59	59	—	34	34	—
Construction cases												
One union	5	—	5	80	—	80	71	—	71	13	—	13
Two unions	3	2	1	29	25	4	29	25	4	16	14	2
Regular cases												
One union	85	27	58	4,625	1,948	2,677	3,682	1,308	2,374	1,896	990	906
Two unions	10	9	1	340	244	96	289	198	91	182	141	41
Termination of Bargaining Rights	63	4	59	2,614	131	2,483	2,407	120	2,287	650	72	578
Successor Employer	1	1	—	31	31	—	30	30	—	24	24	—

* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.

Table 7

Time Required to Process Applications and Complaints Disposed of, by Major Type of Case Fiscal Year 1986-87

Time Taken (Calendar Days)	All Cases		Certification Cases		Section 89 Cases		Section 124 Cases		All Other Cases	
	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent
Total	3,371	100.0	1,006	100.0	891	100.0	664	100.0	810	100.0
Under 8 days	60	1.8	11	1.1	8	0.9	13	2.0	28	3.5
8-14 days	352	12.2	61	7.2	50	6.5	220	35.1	21	6.0
15-21 days	369	23.2	123	19.4	58	13.0	169	60.5	19	8.4
22-28 days	363	33.9	193	38.6	82	22.2	53	68.5	35	12.7
29-35 days	212	40.2	114	49.9	46	27.4	28	72.7	24	15.7
36-42 days	139	44.3	57	55.6	40	31.9	16	75.2	26	18.9
43-49 days	146	48.7	61	61.6	33	35.6	17	77.7	35	23.2
50-56 days	127	52.4	54	67.0	35	39.5	13	79.7	25	26.3
57-63 days	94	55.2	25	69.5	38	43.8	9	81.0	22	29.0
64-70 days	118	58.7	26	72.1	49	49.3	7	82.1	36	33.5
71-77 days	79	61.1	18	73.9	34	53.1	5	82.8	22	36.2
78-84 days	73	63.2	18	75.6	22	55.6	3	83.3	30	39.9
85-91 days	52	64.8	12	76.8	20	57.8	2	83.6	18	42.1
92-98 days	45	66.1	11	77.9	16	59.6	1	83.7	17	44.2
99-105 days	58	67.8	14	79.3	18	61.6	6	84.6	20	46.7
106-126 days	113	71.2	28	82.1	36	65.7	12	86.4	37	51.2
127-147 days	99	74.1	21	84.2	21	68.0	19	89.3	38	55.9
148-168 days	82	76.6	13	85.5	33	71.7	15	91.6	21	58.5
Over 168 days	790	100.0	146	100.0	252	100.0	56	100.0	336	100.0

Table 8

**Union Distribution of Certification Applications Received and Disposed of
Fiscal Year 1986-87**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed**	Withdrawn
All Unions	1,034	1,006	655	206	145
CLC* Affiliates	476	480	322	97	61
Aluminum Brick and Glass Workers	1	1	1	—	—
Auto Workers	11	17	8	7	2
Bakery and Tobacco Workers	1	3	2	1	—
Brewery and Soft Drink Workers	4	4	4	—	—
Canadian Auto Workers	44	35	29	3	3
Canadian Paperworkers	9	9	7	2	—
Canadian Public Employees (CUPE)	80	76	57	13	6
Clothing and Textile Workers	4	6	3	1	2
Communications-Electrical Wkrs.	3	3	1	1	1
Electrical Workers (IPBEW)	3	4	3	1	—
Electrical Workers (UE)	4	2	1	1	—
Energy and Chemical Workers	17	20	12	7	1
Food and Commercial Workers	56	54	35	12	7
Glass, Pottery & Plastic Wkrs.	—	1	1	—	—
Graphic Communications Union	4	5	3	2	—
Hotel Employees	22	24	13	7	4
Ladies Garment Workers	4	2	—	—	2
Machinists	6	4	1	1	2
Molders	1	1	—	1	—
Newspaper Guild	3	5	4	1	—
Office and Professional Employees	5	4	3	—	1
Ontario Public Service Employees	37	34	22	9	3
Postal Workers	3	3	3	—	—
Railway, Transport and General Workers	3	7	3	3	1
Retail Wholesale Employees	20	22	14	7	1
Rubber Workers	3	2	2	—	—
Service Employees International	54	54	33	7	14
Theatrical Stage Employees	2	1	1	—	—
Transit Union (Intl.)	1	2	1	—	1
Typographical Union	3	4	4	—	—
United Garment Workers	1	2	1	1	—
United Steelworkers	61	64	46	8	10
United Textile Workers	1	—	—	—	—
Woodworkers	5	5	4	1	—

* Canadian Labour Congress.

** Includes cases that were terminated.

Table 8 (Cont'd)

Non-CLC Affiliates	558	526	333	109	84
Allied Health Professionals	1	1	1	—	—
Asbestos Workers	—	1	1	—	—
Boilermakers	3	3	2	1	—
Bricklayers International	6	7	7	—	—
Carpenters	57	43	25	10	8
Canadian Educational Workers	—	1	—	1	—
Canadian Operating Engineers	1	2	1	1	—
Christian Labour Association	12	18	11	4	3
Electrical Workers (IBEW)	7	16	11	2	3
Food and Service Workers	—	2	2	—	—
Headwear Workers	2	1	—	1	—
Independent Local Union	69	53	30	13	10
International Operating Engineers	72	70	43	11	16
Labourers	156	117	77	19	21
Merchandizing Employees	1	1	—	—	1
Occasional Teachers Association	1	1	1	—	—
Ontario English Catholic Teachers	—	1	—	1	—
Ontario Nurses Association	37	31	24	4	3
Ontario Public School Teachers	4	12	11	1	—
Ontario Secondary School Teachers	5	12	6	5	1
Painters	16	15	10	2	3
Plant Guard Workers	8	8	4	2	2
Plasterers	1	2	—	2	—
Plumbers	25	29	16	10	3
Sheet Metal Workers	9	7	3	3	1
Structural Iron Workers	6	7	2	3	2
Teamsters	36	37	29	7	1
Textile Processors	23	27	15	6	2
Multi-union	—	1	1	—	—

Table 9

**Industry Distribution of Certification Applications Received and Disposed of
Fiscal Year 1986-87**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed*	Withdrawn
All Industries	1,034	1,006	655	206	145
Manufacturing	285	280	193	59	28
Food, beverages	55	40	28	10	2
Tobacco products	1	—	—	—	—
Rubber, plastic products	24	25	20	3	2
Leather industries	1	3	2	1	—
Textile mill products	5	5	5	—	—
Knitting mills	—	—	—	—	—
Clothing industries	4	5	3	—	2
Wood products	9	8	5	1	2
Furniture, fixtures	16	18	12	4	2
Paper, allied products	10	10	8	—	2
Printing, publishing	14	15	11	4	—
Primary metal industries	9	7	5	1	1
Metal fabricating industries	32	36	28	6	2
Machinery, except electrical	24	28	20	7	1
Transportation equipment	17	16	7	4	5
Electrical products	15	17	10	5	2
Non-metallic mineral products	16	10	6	2	2
Petroleum, coal products	4	4	4	—	—
Chemical, chemical products	13	18	10	6	2
Miscellaneous manufacturing	16	15	9	5	1
Non-Manufacturing	749	726	462	147	117
Agriculture	—	—	—	—	—
Forestry	—	—	—	—	—
Fishing, trapping	8	8	—	6	2
Mining, quarrying	3	5	3	1	1
Transportation	31	30	11	4	15
Storage	2	2	2	—	—
Communications	2	2	—	—	2
Electric, gas, water	10	6	5	1	—
Wholesale trade	25	31	19	10	2
Retail trade	38	36	23	9	4
Finance, insurance	2	2	1	1	—
Real Estate	14	13	9	1	3
Education, related services	49	70	45	17	8
Health, welfare services	147	143	104	23	16
Religious organizations	—	—	—	—	—
Recreational services	4	5	3	2	—
Management services	6	8	5	3	—
Personal services	7	9	6	2	1
Accommodation, food services	57	53	28	16	9
Other services	30	29	22	—	7

Table 9 (Cont'd)

Federal government	—	—	—	—	—
Provincial government	—	—	—	—	—
Local government	27	26	17	4	5
Other government	—	—	—	—	—
Construction	287	248	159	47	42

* Includes cases that were terminated.

Table 10

**Employees Covered by Certification Applications Granted
Fiscal Year 1986-87**

Employee Size*	Total		Construction**		Non-Construction	
	Number of Applications	Number of Employees	Number of Applications	Number of Employees	Number of Applications	Number of Employees
Total	655	23,536	154	1,109	501	22,427
2-9 employees	242	1,133	118	440	124	693
10-19 employees	134	1,857	23	289	111	1,568
20-39 employees	111	3,111	12	320	99	2,791
40-99 employees	107	6,485	1	60	106	6,425
100-199 employees	40	5,257	—	—	40	5,257
200-499 employees	19	4,569	—	—	19	4,569
500 employees or more	2	1,124	—	—	2	1,124

* Refers to the total number of employees in one or more bargaining units certified in an application. A total of 719 bargaining units were certified in the 655 applications in which certification was granted.

** Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the 159 certified construction industry applications shown in Table 9, which includes all applications involving construction employers whether processed under the construction industry provisions of the Act or not.

Table 11
Time Required to Process Certification Applications Granted*
Fiscal Year 1986-87

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
Total	655	100.0	500	100.0	155	100.0
Under 8 days	—	—	—	—	—	—
8-14 days	33	5.0	—	—	33	21.3
15-21 days	82	17.6	50	10.0	32	41.9
22-28 days	144	39.5	125	35.0	19	54.2
29-35 days	94	53.9	80	51.0	14	63.2
36-42 days	47	61.1	41	59.2	6	67.1
43-49 days	37	66.7	32	65.6	5	70.3
50-56 days	32	71.6	22	70.0	10	76.8
57-63 days	15	73.9	13	72.6	2	78.1
64-70 days	10	75.4	8	74.2	2	79.4
71-77 days	12	77.3	11	76.4	1	80.0
78-84 days	12	79.1	10	78.4	2	81.3
85-91 days	9	80.5	8	80.0	1	81.9
92-98 days	6	81.4	6	81.2	—	—
99-105 days	13	83.4	11	83.4	2	83.2
106-126 days	15	85.6	10	85.4	5	86.5
127-147 days	10	87.2	10	87.4	—	—
148-168 days	4	87.8	2	87.8	2	87.7
169 days and over	80	100.0	61	100.0	19	100.0

* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.

Table 13

**Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1986-87**

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	719	23,536	213	8,166	140	7,024	39	1,962	327	6,384
CLC	363	13,973	148	6,045	81	2,017	32	1,649	102	4,262
Aluminum Brick and Glass Workers	1	36	1	36	—	—	—	—	—	—
Bakery and Tobacco Workers	2	218	2	218	—	—	—	—	—	—
Brewery and Soft Drink Workers	5	91	4	62	1	29	—	—	—	—
Canadian Auto Workers	28	2,398	11	900	2	15	3	283	12	1,200
Canadian Paperworkers	7	396	5	134	—	—	—	—	2	262
Canadian Public Employees (CUPE)	68	2,158	25	648	21	978	2	93	20	439
Clothing and Textile Workers	3	130	1	10	—	—	—	—	2	120
Communications-Electrical Workers	2	10	1	8	1	2	—	—	—	—
Electrical Workers (IPBEW)	3	42	—	—	—	—	—	—	3	42
Electrical Workers (UE)	1	4	—	—	—	—	—	—	1	4
Energy and Chemical Workers	18	301	7	154	6	39	3	68	2	40
Food and Commercial Workers	41	1,418	18	875	14	248	1	31	8	264
Glass, Pottery and Plastic Workers	1	42	1	42	—	—	—	—	—	—
Graphic Communication Union	4	201	3	195	1	6	—	—	—	—
Hotel Employees	15	316	6	155	6	129	2	26	1	6
Machinists	1	56	1	56	—	—	—	—	—	—
Newspaper Guild	3	188	—	—	1	15	—	—	2	173
Office and Professional Empls	3	102	1	20	—	—	1	57	1	25
Ontario Public Service Empls	27	691	9	339	11	203	—	—	7	149
Postal Workers	3	53	2	41	—	—	—	—	1	12
Railway, Transport and General Workers	3	444	3	444	—	—	—	—	—	—
Retail Wholesale Employees	13	283	3	95	2	43	1	34	7	111
Rubber Workers	2	90	—	—	—	—	1	53	1	37
Service Employees International	42	1,164	16	588	14	307	3	133	9	136
Theatrical Stage Employees	1	11	—	—	—	—	—	—	1	11
Transit Union (Intl)	1	58	1	58	—	—	—	—	—	—
Typographical Union	5	100	3	77	1	3	1	20	—	—
United Auto Workers	8	509	4	223	—	—	—	—	4	286
United Garment Workers	1	9	1	9	—	—	—	—	—	—
United Steelworkers	47	2,277	15	481	—	—	14	851	18	945
Woodworkers	4	177	4	177	—	—	—	—	—	—

Table 13 (Cont'd)
Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1986-87

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	356	9,563	65	2,121	59	5,007	7	313	225	2,122
Air Line Pilots	—	—	—	—	—	—	—	—	—	—
Allied Health Professionals	1	12	—	—	1	12	—	—	—	—
Asbestos Workers	1	3	—	—	—	—	—	—	1	3
Boilermakers	2	28	—	—	—	—	—	—	2	28
Bricklayers International	7	47	—	—	—	—	—	—	7	47
Carpenters	25	340	2	57	1	34	—	—	22	249
Canadian Operating Engineers	1	5	—	—	—	—	—	—	1	5
Christian Labour Association	16	368	6	191	6	154	—	—	4	23
Electrical Workers (IBEW)	8	106	2	53	—	—	—	—	6	53
Food and Service Workers	3	29	1	11	1	8	—	—	1	10
Independent Local Union	34	1,836	4	304	10	976	1	144	19	412
International Operating Engineers	44	284	3	41	2	9	—	—	39	234
Labourers	80	719	6	106	—	—	—	—	74	613
Occasional Teachers Association	1	247	—	—	1	247	—	—	—	—
Ontario Nurses Association	34	678	12	238	16	409	1	7	5	24
Ontario Public School Teachers	11	2,519	—	—	11	2,519	—	—	—	—
Ontario Secondary School Teachers	8	622	—	—	8	622	—	—	—	—
Painters	10	62	—	—	—	—	—	—	10	62
Plant Guard Workers	4	46	2	38	1	2	—	—	1	6
Plumbers	16	134	—	—	—	—	—	—	16	134
Sheet Metal Workers	3	10	—	—	—	—	—	—	3	10
Structural Iron Workers	2	6	—	—	—	—	—	—	2	6
Teamsters	30	584	15	303	1	15	5	162	9	104
Textile Processors	15	878	12	779	—	—	—	—	3	99

Table 14

Occupational Groups in Bargaining Units Certified by Industry
Fiscal Year 1986-87

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Industries	719	23,536	537	14,367	36	1,002	73	5,257	17	415	56	2,495
Manufacturing	201	9,200	187	7,999	5	50	1	143	—	—	8	1,008
Food, beverage	29	1,992	29	1,992	—	—	—	—	—	—	—	—
Rubber, plastics	5	472	5	472	—	—	—	—	—	—	—	—
Leather	2	120	1	110	1	10	—	—	—	—	—	—
Textile	5	309	5	309	—	—	—	—	—	—	—	—
Clothing	3	287	3	287	—	—	—	—	—	—	—	—
Wood	5	151	5	151	—	—	—	—	—	—	—	—
Furniture, fixtures	12	541	12	541	—	—	—	—	—	—	—	—
Paper	8	321	7	307	1	14	—	—	—	—	—	—
Printing, publishing	12	468	8	274	2	21	1	143	—	—	1	30
Primary metals	5	111	4	94	—	—	—	—	—	—	1	17
Fabricated metals	28	741	27	736	—	—	—	—	—	—	1	5
Machinery	20	1,030	19	880	—	—	—	—	—	—	1	150
Transportation equipment	7	681	7	681	—	—	—	—	—	—	—	—
Electrical products	11	229	10	224	1	5	—	—	—	—	—	—
Non-metallic minerals	7	195	7	195	—	—	—	—	—	—	—	—
Petroleum, coal	7	48	7	48	—	—	—	—	—	—	1	62
Chemicals	11	396	10	334	—	—	—	—	—	—	3	744
Other manufacturing	24	1,108	21	364	—	—	—	—	—	—	—	—
Non-Manufacturing	518	14,336	350	6,368	31	952	72	5,114	17	415	48	1,487
Mining, quarrying	3	150	3	150	—	—	—	—	—	—	—	—
Transportation	12	471	11	391	1	73	—	—	—	—	—	—
Storage	2	40	2	40	—	—	—	—	—	—	—	—
Electric, gas, water	6	101	5	89	1	12	—	—	—	—	—	—
Wholesale trade	21	480	20	472	1	8	—	—	—	—	—	—
Retail trade	30	675	6	206	1	3	—	—	17	415	6	51
Finance, insurance carriers	1	25	—	—	1	25	—	—	—	—	—	—
Real estate, insurance agencies	9	35	9	35	—	—	—	—	—	—	—	—
Education, related services	46	4,997	8	316	4	215	30	4,344	—	—	4	122
Health, welfare services	136	4,083	50	1,579	16	516	41	767	—	—	29	1,221
Recreational services	3	25	3	25	—	—	—	—	—	—	—	—
Management services	6	98	4	26	2	72	—	—	—	—	—	—
Personal services	5	185	5	185	—	—	—	—	—	—	—	—
Accommodation, food services	36	1,267	34	1,255	—	—	—	—	—	—	2	12
Other services	23	249	16	182	3	23	1	3	—	—	3	41
Local government	19	336	14	291	1	5	—	—	—	—	4	40
Construction	160	1,119	160	1,119	—	—	—	—	—	—	—	—

Table 15

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1986-87

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	719	23,536	537	14,367	36	1,002	73	5,257	17	415	56	2,495
CLC	363	13,973	258	10,120	31	831	7	221	16	408	51	2,393
Aluminum Brick and Glass Workers	1	36	1	36	—	—	—	—	—	—	—	—
Bakery and Tobacco Workers	2	218	2	218	—	—	—	—	—	—	—	—
Brewery and Soft Drink Workers	5	91	5	91	—	—	—	—	—	—	—	—
Canadian Auto Workers	28	2,398	24	1,504	—	—	—	—	—	—	4	894
Canadian Paperworkers	7	396	6	382	1	14	—	—	—	—	—	—
Canadian Public Employees (CUPE)	68	2,158	33	859	9	261	2	59	2	47	22	932
Clothing and Textile Workers	3	130	3	130	—	—	—	—	—	—	—	—
Communications-Electrical Workers	2	10	2	10	—	—	—	—	—	—	—	—
Electrical Workers (IPBEW)	3	42	3	42	—	—	—	—	—	—	—	—
Electrical Workers (UE)	1	4	1	4	—	—	—	—	—	—	—	—
Energy and Chemical Workers	18	301	18	301	—	—	—	—	—	—	—	—
Food and Commercial Workers	41	1,418	25	1,157	—	—	1	4	9	213	6	44
Glass, Pottery and Plastic Workers	1	42	1	42	—	—	—	—	—	—	—	—
Graphic Communication Union	4	201	4	201	—	—	—	—	—	—	—	—
Hotel Employees	15	316	15	316	—	—	—	—	—	—	—	—
Machinists	1	56	1	56	—	—	—	—	—	—	—	—
Newspaper Guild	3	188	—	—	1	15	1	143	—	—	1	30
Office and Professional Empls	3	102	—	—	2	82	—	—	—	—	1	20
Ontario Public Service Empls	27	691	6	198	6	122	2	12	—	—	13	359
Postal Workers	3	53	3	53	—	—	—	—	—	—	—	—
Railway, Transport and General Workers	3	444	3	444	—	—	—	—	—	—	—	—
Retail Wholesale Employees	13	283	7	141	1	3	—	—	4	77	1	62
Rubber Workers	2	90	2	90	—	—	—	—	—	—	—	—
Service Employees International	42	1,164	31	753	8	307	1	3	1	71	1	30
Theatrical Stage Employees	1	11	1	11	—	—	—	—	—	—	—	—
Transit Union (Intl)	1	58	1	58	—	—	—	—	—	—	—	—
Typographical Union	5	100	5	100	—	—	—	—	—	—	—	—
United Auto Workers	8	509	6	492	2	17	—	—	—	—	—	—
United Garment Workers	1	9	1	9	—	—	—	—	—	—	—	—
United Steelworkers	47	2,277	44	2,245	1	10	—	—	—	—	2	22
Woodworkers	4	177	4	177	—	—	—	—	—	—	—	—

Table 15 (Cont'd)

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1986-87

	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	356	9,563	279	4,247	5	171	66	5,036	1	7	5	102
Air Line Pilots	—	—	—	—	—	—	—	—	—	—	—	—
Allied Health Professionals	1	12	—	—	—	—	—	—	—	—	1	12
Asbestos Workers	1	3	1	3	—	—	—	—	—	—	—	—
Boilermakers	2	28	2	28	—	—	—	—	—	—	—	—
Bricklayers International	7	47	7	47	—	—	—	—	—	—	—	—
Carpenters	25	340	25	340	—	—	—	—	—	—	—	—
Canadian Operating Engineers	1	5	1	5	—	—	—	—	—	—	—	—
Christian Labour Association	16	368	13	292	—	—	1	5	—	—	2	71
Electrical Workers (IBEW)	8	106	8	106	—	—	—	—	—	—	—	—
Food and Service Workers	3	29	—	—	—	—	1	10	—	—	2	19
Independent Local Union	34	1,836	21	728	3	153	10	955	—	—	—	—
International Operating Engineers	44	284	43	277	—	—	—	—	1	7	—	—
Labourers	80	719	80	719	—	—	—	—	—	—	—	—
Occasional Teachers Association	1	247	—	—	—	—	1	247	—	—	—	—
Ontario Nurses Association	34	678	—	—	—	—	34	678	—	—	—	—
Ontario Public School Teachers	11	2,519	—	—	—	—	11	2,519	—	—	—	—
Ontario Secondary School Teachers	8	622	—	—	—	—	8	622	—	—	—	—
Painters	10	62	10	62	—	—	—	—	—	—	—	—
Plant Guard Workers	4	46	4	46	—	—	—	—	—	—	—	—
Plumbers	16	134	16	134	—	—	—	—	—	—	—	—
Sheet Metal Workers	3	10	3	10	—	—	—	—	—	—	—	—
Structural Iron Workers	2	6	2	6	—	—	—	—	—	—	—	—
Teamsters	30	584	28	566	2	18	—	—	—	—	—	—
Textile Processors	15	878	15	878	—	—	—	—	—	—	—	—

*Ontario Labour Relations Board,
400 University Avenue,
Toronto, Ontario*

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ONTARIO LABOUR RELATIONS BOARD

ANNUAL REPORT 1987-88



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**ONTARIO
LABOUR RELATIONS BOARD
ANNUAL REPORT
1987-88**



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Ontario
Labour Relations
Board

Commission
des relations
de travail de l'Ontario

Office of the Chair

Bureau du président

400 University Avenue
Toronto, Ontario
M7A 1V4
416/965-4193

The Honourable Gregory Sorbara
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
M7A 1T7

Dear Minister:

It is my pleasure to provide to you the eighth Annual Report of the Ontario Labour Relations Board for the period commencing April 1, 1987 to March 31, 1988.

Sincerely,

Rosalie S. Abella
Chair

CHAIR'S MESSAGE

It is inevitable in reviewing a year's work to look back in combined wonder, relief and pride—wonder that what seemed insurmountable was in fact overcome, relief at the same thing, and pride in the human energies that produced the results that generated our wonder and relief. The Ontario Labour Relations Board has had a remarkable year and looking back over it from its current strength, we marvel. We have a new Registrar, Theresa Inniss, a new Manager of Administration, Christine Karcza, additional Vice-Chairs and Board members, computerization in various stages of implementation, more hearing rooms and more expeditious processing, settlement and adjudicative procedures. It is in fact a dramatic picture of a tenacious, collegial commitment to the highest possible quality of public service in the face of difficulties that often felt relentless. The size of the Board and its caseload, the expectations of the labour relations community, the microscope of public scrutiny—all these the Board accepts as challenges it must and can meet. Accepting the reality that every decision produces at least one unsuccessful and therefore disappointed party, we have concentrated on ensuring that the process leading to the result is as expeditious and fair as possible. The Board has sought to provide integrity in both—the process and the result—and has done so remarkably well given the context in which it exists.

It is not just that this is what the Board has increasingly accomplished and entrenched during this year, it is that it is peopled by public servants committed, through a sense of pride in the institution and its goals, to maintaining levels of excellence.

To them—the adjudicators for their incredible skill, knowledge and insight; Jack MacDonald and the Labour Relations Officers for their genius at settlement; Virginia Robeson for her efforts during the transition and the extraordinary Theresa Inniss for turning the transition into the future; the indefatigable Christine Karcza for redefining sensitive management; the solicitors, Colleen Edwards, Kathleen MacDonald and Marilyn Nairn for their legal support; Clare Lyons for the library's accessibility; and the entire support staff for monumental donations of time, confidence, and cooperation.

Although this message appears slightly more elegiac than a standard annual report displays, it is done deliberately. This has not been a standard year. Nor have the efforts of the Ontario Labour Relations Board's staff, throughout the organizational layers, been anything like standard. Each branch of the Board, in its own way, made a singular and masterful contribution to the whole, succeeding ultimately in creating an energetic and positive trajectory that leaves the Board rightfully enthusiastic about its ability to serve the community for whom it functions. And in these final words, it is the community whose cooperation and assistance we want gratefully to acknowledge. As the community dealt with the Board, walking on what must at times have appeared to be a "fault line", it combined patience and support with constructive observations leaving the Board at all times persuaded that all was not only possible, but worth the effort. To the legal community, its clients, the organizations, associations and parties who endured with graciousness the frustrations of this transition year, the Board extends its thanks. A commitment never to quake again is impossible to make; a commitment never knowingly to compromise the Board's ability to deliver the best possible services of which an independent, quasi-judicial tribunal is capable, can be treated as a guarantee.

I INTRODUCTION

This is the eighth issue of the Ontario Labour Relations Board's Annual Report, which commenced publication in the fiscal year 1980-81. This issue covers the fiscal year April 1, 1987 to March 31, 1988.

The report contains up-to-date information on the organizational structure and administrative developments of interest to the public and notes changes in personnel of the Board. As in previous years, this issue provides a statistical summary and analysis of the work-load carried by the Board during the fiscal year under review. Detailed statistical tables are provided on several aspects of the Board's functions.

This report contains a section highlighting some of the significant decisions of the Board issued during the year. A brief description of every Board matter that was subject to review by the courts during the year is provided. Since many of these court decisions are unreported, the summaries in the Board's Annual Report have been helpful to the practising bar. The report continues to provide a legislative history of the *Labour Relations Act* and notes any amendments to the Act that were passed during the fiscal year.

II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of a public hearing before a select committee of the Provincial Legislative Assembly. Although the establishment of a “Labour Court” was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee’s report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

“ . . . the shape and structure of the collective-bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its ‘judicial’ role.” (MacDowell, R.O., “Law and Practice before the Ontario Labour Relations Board” (1978), 1 Advocate’s Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today—management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers—something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when disputes arise in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944). In his book, *The Ontario Labour Court 1943-44*, (Queen’s University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court’s early demise:

“ . . . the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944.”

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a war time move by the Federal Government to centralize

labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over "property and civil rights." (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5).

The Act was subsequently amended so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, "opt in" to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the Federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations "in the same form and to the same effect as that ... Act which may be passed by the Parliament of Canada at the session currently in progress ..." This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board's role was fairly limited. There was no enforcement mechanism at the Board's disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lock-out unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary of the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board's power was quite limited. The power to make certain declarations, determinations, or to grant consent to prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the Board's acquisition of the power to grant a trade union "successor" status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of "successor employers" was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

The Labour Relations Amendment Act, 1960, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" (*Report of The Royal Commission on Labour Management Relations in the Construction Industry*, March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the Province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" (*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry of Ontario*, May, 1976) (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31). Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, the Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created "duty of fair representation". This duty, imposed on trade unions, required them not to act in a manner which was arbitrary, discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make "cease and desist" orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and be enforceable as orders of the Court.

A major increase in the Board's remedial powers under the *Labour Relations Act* occurred 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board's remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make "cease and desist" orders with respect to

any unlawful strike or lock-out. It was in 1975 as well, that the Board's jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, the *Labour Relations Amendment Act, 1980 (No. 2)*, S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer's final offer at the request of their employer. In June of 1983, the *Labour Relations Amendment Act, 1983*, S.O. 1983, c. 42, became law. It introduced into the Act section 71a, which prohibits strike related misconduct and the engaging of or acting as, a professional strike-breaker. To date the Board has not been called upon to interpret or apply section 71a.

In June of 1984, the *Labour Relations Act, 1984*, S.O. 1984, c. 34 was enacted. This Act dealt with several areas. It gave the Board explicit jurisdiction to deal with illegal picketing or threats of illegal picketing and permits a party affected by illegal picketing to seek relief through the expedited procedures in sections 92 and 135, rather than the more cumbersome process under section 89. The Act also permitted the Board to respond in an expedited fashion to illegal agreements or arrangements which affect the industrial, commercial and institutional sector of the construction industry. It further established an appropriate voting constituency for strike, lock-out and ratification votes in that sector and provided a procedure for complaints relating to voter eligibility to be filed with the Minister of Labour. The new amendment also eliminated the 14 day waiting period before an arbitration award which is not complied with may be filed in court for purposes of enforcement.

In May of 1986, the *Labour Relations Amendment Act, 1986*, S.O. 1986, c. 17 was passed to provide for first contract arbitration. Where negotiations have been unsuccessful, either party can apply to the Board to direct the settlement of a first collective agreement by arbitration. Within strict time limits the Board must determine whether the process of collective bargaining has been unsuccessful due to a number of enumerated grounds. Where a direction has been given, the parties have the option of having the Board arbitrate the settlement.

THE FULL BOARD AND SENIOR STAFF



Front Row (left to right):

M. Nairn, D. Wozniak, V. Robeson, J. Rundle, R. MacDowell, R. Abella, T. Inniss, J. McCormack, R. Herman, C. Karcza, N. Satterfield

2nd Row

K. Rogers, M. Eayrs, K. MacDonald, N. Dissanayake, R. Furness, W. Gibson, C. Ballentine, J. Sarra, A. Hershkovitz, H. Kobryn, D. MacDonald, P. Hughes, C. Edwards

3rd Row

P. Grasso, J. Ronson, K. Petryshen, K. O'Neil, G. Surdykowski, B. Armstrong, R. Howe, O. Gray, W. Wightman, T. Meagher, P. Knopf, D. Patterson, R. Sloan

4th Row

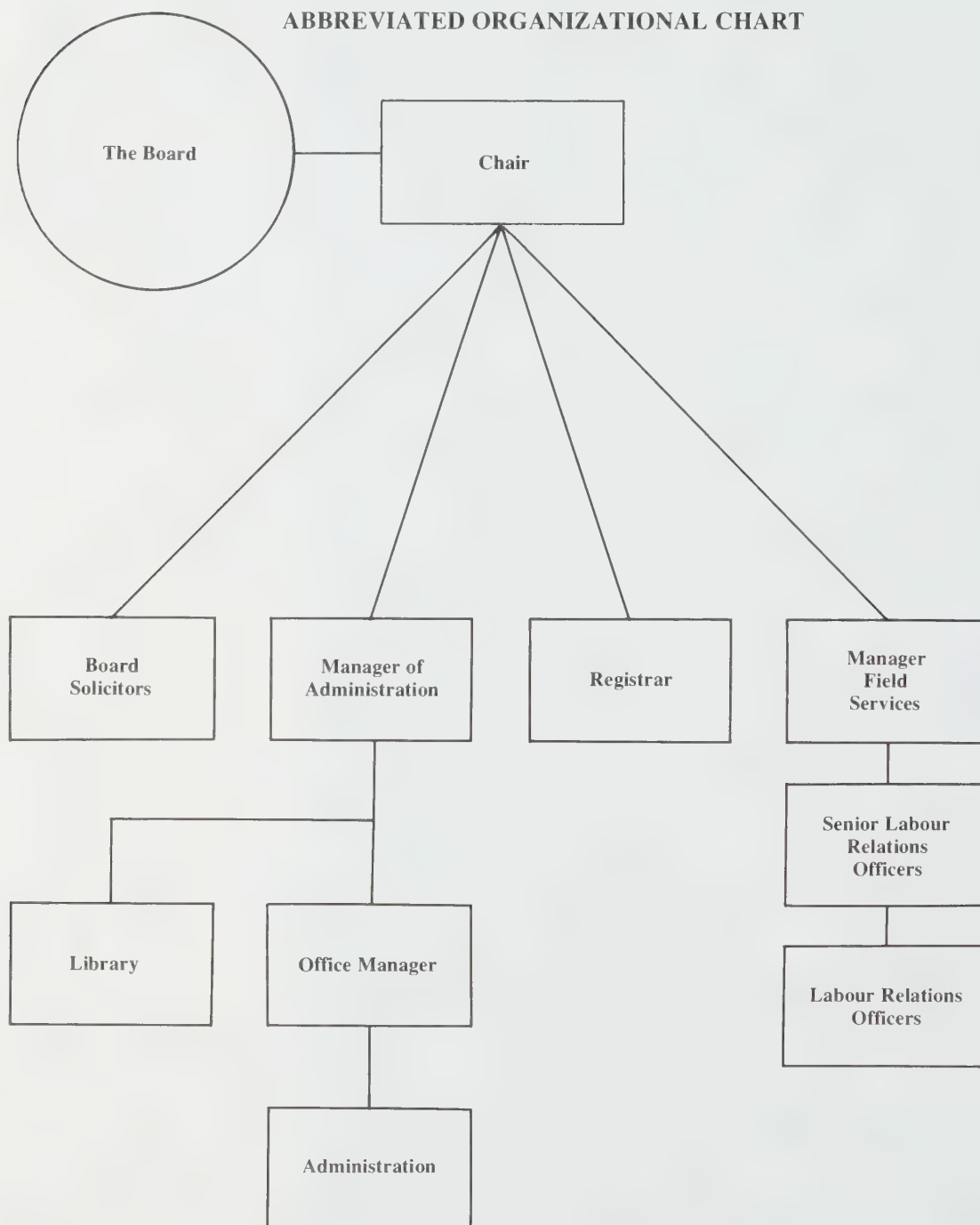
H. Freedman, J. Kennedy, I. Stamp, G. Shamanski, R. Montague, R. Pirrie, N. Fraser, H. Peacock, W. Correll, F. Burnet, E. Theobald

Missing:

S. Tacon, M. Bendel, J. Campbell, L. Collins, A. Foucault, M. Jones, R. McMurdo, J. Murray, P. O'Keeffe, W. O'Neill, J. Redshaw, M. Ross, M. Stockton, J. Trim, N. Wilson, R. Swenor, I. Springate

III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:



IV THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act*, R.S.O. 1980, c. 228, as follows:

“ . . . it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, first contract arbitration, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chair and an Alternate Chair, several Vice-Chairs and a number of Members representative of labour and management respectively in equal numbers. At the end of the fiscal year the Board consisted of the Chair, Alternate Chair, 13 full-time Vice-Chairs, 4 part-time Vice-Chairs and 41 Board Members, 17 full-time and 24 part-time. These appointments were made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Labour Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for the formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the Act, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not subject to appeal and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, police officers or full-time fire fighters, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 74. On the other hand, the Board has full jurisdiction over employees employed by municipalities. A distinct piece of legislation, the *Hospital Labour Disputes Arbitration Act*, stipulates special laws that govern labour relations of hospital employees, particularly with respect to the resolution of collective bargaining disputes and the *Successor Rights (Crown Transfers) Act*, R.S.O. 1980, c. 489 provides for application to the Board where there is a transfer of an undertaking from the crown to an employer and vice versa.

The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. A similar jurisdiction is conferred on the Board by section 134b of the *Environmental Protection Act*, R.S.O. 1980, c. 141, proclaimed in November 1983 by S.O. 1983, c. 52, s. 22. From time to time the Board is called upon to determine the impact of the *Canadian Charter of Rights and Freedoms* on the rights of parties under the *Labour Relations Act*.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Legal Services.

(a) ADMINISTRATIVE DIVISION

The Registrar is responsible for co-ordinating the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. She determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings or on particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with a substantially increasing caseload, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload within the resources allocated to it underpins much of its contribution to labour relations harmony in this province.

The Manager of Administration manages the day-to-day administrative operation while the Manager of Field Services manages the field operations. An Administrative Committee comprised of the Chair, Alternate Chair, Registrar, Manager of Administration, Manager of Field Services and Solicitors meets regularly to discuss all aspects of Board administration and management.

The administrative division of the Board includes: office management, case monitoring, and library services.

1. Office Management

An administrative support staff of approximately 59, headed by an Office Manager who reports to the Manager of Administration and a Senior Clerical Supervisor, process all applications received by the Board.

2. Case Monitoring

The Board continues to rely on its computerized case monitoring system. Data on each case are coded on a day-to-day basis as the status changes. Reports are then issued on a weekly and monthly basis on the progress of each proceeding from the filing of applications or complaints to their final disposition.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide statistical information to senior management that is used as a basis for recommendations regarding improvements or changes in Board practices and procedures which can lead to increased productivity and better service to the community.

3. Library Services

The Ontario Labour Relations Board Library employs a staff of 3, including a full-time professional librarian. The Library staff provides research services for the Board and assists other library users.

The Board Library maintains a collection of approximately 1200 texts, 25 journals and 30 case reports in the areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The library has approximately 4,500 volumes. The collection includes decisions from other jurisdictions, such as the Canada Labour Relations Board, the U.S. National Labor Relations Board and provincial labour boards across Canada.

The Library staff maintains computer indexes to the Board's Monthly Report of decisions. It provides access by subject, party names, file number, statutes considered, cases cited, date, etc. The system also provides a microfiche index to the decisions. It permits Board members and staff prompt and accurate access to previous Board decisions dealing with particular issues under consideration. The Board is the first labour relations tribunal in Canada to develop and implement this type of system. It has been reviewed by officials from a number of labour relations boards and may be used as a model in the development of other computerized retrieval systems.

The Library staff has also compiled a manual index to the Bargaining Units certified by the Board since 1980. This index provides access by union name and subject.

(b) FIELD SERVICES

In view of the Board's continuing belief that the interests of parties appearing before it, and labour relations in the province generally, are best served by settlement of disputes by the parties without the need for a formal hearing and adjudication, the Board attempts to make maximum use of its labour relations officers' efforts in this area. Responsibility for the division lies with the Manager of Field Services. In promoting overall efficiency, the manager puts emphasis upon the setting and monitoring of performance standards, case assignments, staff development and maintaining liaison with the Board. He is assisted by three Senior Labour Relations Officers, each of whom is assigned a team of officers. In addition to undertaking their share of the caseload in the field, the Senior Labour Relations Officers are responsible for providing guidance and advice in the handling of particular cases, managing the settlement process on certification days on a rotating basis, and assisting with the performance appraisals of the officers. In addition to the Labour Relations Officers, the Board employs three Returning/Waiver Officers. They conduct representation votes directed by the Board, as well as last offer votes directed by the Minister of Labour (see sec. 40 of the Act). They also carry out the Board's programme for waiver of hearings in certification applications.

The Board's field staff continued its excellent record of performance throughout the fiscal year under review. In relation to complaints under the *Labour Relations Act* and the *Occupational Health and Safety Act*, the officers handled a total caseload of 1032 assignments, of which 87.3 percent were settled by the efforts of the officers. The officers handled a total of 972 grievances in the construction industry of which 93.5 percent were settled. Of 274 certification applications dealt with under the waiver of hearings programme, the officers were successful in 213 or 78 percent.

The Alternate Chair of the Board supervises the activities of the field officers, and along with the Manager of Field Services and the Board Solicitors, meets with the officers on a monthly basis to deal with administrative matters and review Board jurisprudence affecting officers' activity and other policy and legal developments relevant to the officers' work.

(c) LEGAL SERVICES

Legal services to the Board are provided by the Solicitors' Office. The office consists of three Board solicitors, who report directly to the Chair. The Board also employs two articling students to assist the solicitors in carrying out the functions of the Solicitors' Office.

The Solicitors' Office is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chair, Vice-Chair and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Solicitors' Office is responsible for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the solicitors. When preparation or revision of practice notes, Board Rules or forms become necessary, the solicitors are responsible for undertaking those tasks.

The solicitors are active in the staff development programme of the Board and the solicitors regularly meet with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, a solicitor prepares written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The solicitors also advise the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Solicitors' Office is the representation of the Board's interests in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, a solicitor, in consultation with the Chair, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Solicitors' Office is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

The Solicitors' Office is responsible for all of the Board's publications. One of the Board's solicitors is the Editor of the Ontario Labour Relations Board Reports, a monthly series of selected Board decisions which commenced publication in 1944. This series is one of the oldest labour board reports in North America. In addition to reporting Board decisions, each issue of the Reports contains a section listing all of the matters disposed of by the Board in the month in question, including the bargaining unit descriptions, results of representation votes and the manner of disposition.

The Solicitors' Office also issues a publication entitled "Monthly Highlights". This publication, which commenced in 1982, contains scope notes of significant decisions of the Board issued during the month and other notices and administrative developments of interest to the labour relations community. This publication is sent free of charge to all subscribers to the Ontario Labour Relations Board Reports. The Solicitors' Office is also responsible for periodically revising the publication entitled "A Guide to the Labour Relations Act", which is an explanation in layman's terms, of the significant provisions of the Act. The latest revision took place in June, 1986, to reflect amendments to the Act.

MEMBERS OF THE BOARD

At the end of the fiscal year 1987-88, the Board consisted of the following members:

ROSALIE S. ABELLA *Chair*

Rosalie Abella assumed office as Chair of the Board on September 19, 1984. After graduating from University of Toronto Law School in 1970, she practised law until her appointment in 1976 as a judge of the Ontario Provincial Court (Family Division). In addition to carrying out her judicial functions, Rosalie Abella's professional background includes: Member, Ontario Public Service Labour Relations Tribunal, 1975-76; Commissioner, Ontario Human Rights Commission, 1975-80; Member, Premier's Advisory Committee on Confederation, Ontario, 1977-82; Co-Chairman, University of Toronto Academic Discipline Tribunal, 1976-1984; Director, International Commission of Jurists (Canadian Section), 1982 to the present; Director, Canadian Institute for the Administration of Justice, 1983 to the present; and Chairman, Report on Access to Legal Services by the Disabled, 1983; and Director, The Institute on Public Policy, 1987 to the present.

In 1983 Rosalie Abella was appointed as Sole Commissioner, Royal Commission on Equality in Employment. The report of this Commission was submitted to the Federal Government in November of 1984.

RICHARD (RICK) MacDOWELL *Alternate Chair*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), an M.Sc. (with Distinction) in Economics from the London School of Economics and Political Science (1970) and an LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chair in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit. During May-August, 1984, Mr. MacDowell served as the Board's Alternate Chair in an acting capacity.

MICHAEL BENDEL *Vice-Chair*

Mr. Bendel joined the Board as a part-time Vice-Chair in September 1987. He is a graduate of the University of Manchester, England (LL.B., 1966) and the University of Ottawa (LL.B., 1975). Mr. Bendel was a legal officer with the International Labour Office, Geneva, Switzerland, from 1966 to 1969. From 1969 to 1974, he was employed by the Professional Institute of the Public Service of Canada (Ottawa) in various capacities, including in-house counsel and negotiator. Following his call to the Bar of Ontario in 1977, he was appointed professor in the Common Law Section, Faculty of Law, University of Ottawa, where he taught various labour law and other law courses, at the undergraduate and graduate levels, until 1984. In 1984, Mr. Bendel was appointed Deputy Chairman of the Public Service Staff Relations Board (Ottawa), where he was responsible for the interest arbitration function under the *Public Service Staff Relations Act* and where he also acted as grievance arbitrator. Upon resigning from that Board in August 1987, he entered private practice as a labour arbitrator. In addition to his arbitration practice and his part-time Vice-Chair position, Mr. Bendel is currently a part-time member of the Public Service Staff Relations Board. He is the author of several articles on labour law subjects in law journals.

NIMAL V. DISSANAYAKE *Vice-Chair*

A former Senior Solicitor of the Board, Mr. Dissanayake was appointed a part-time Vice-Chair of the Board in July, 1987. He holds the degrees of LL.B. and LL.M. from Queen's University, Kingston. Having served his period of law articles with the Board Mr. Dissanayake was called to the Ontario Bar in 1980. Prior to joining the Board as a solicitor he taught at the Faculty of Business, McMaster University, Hamilton, as Assistant Professor of Industrial Relations between 1978 and 1980. Since December 1987, he has served as a Vice-Chairman of the Grievance Settlement Board and is also engaged in adjudication as a private arbitrator and referee under the *Employment Standards Act*.

HARRY FREEDMAN *Vice-Chair*

Mr. Freedman was appointed a Vice-Chair of the Board in September, 1984. Having acquired the degrees of B.A. (University of Toronto, 1971) and LL.B. (Osgoode Hall Law School, 1975), Mr. Freedman was called to the Ontario Bar in 1977. He practised labour law with a Toronto law firm until April, 1979, when he became the Ontario Labour Relations Board's Senior Solicitor. He held this position until his appointment as Vice-Chair. Mr. Freedman has been associated with Ryerson Polytechnical Institute for several years as a lecturer in industrial relations, and has taught a seminar course in grievance arbitration at Osgoode Hall Law School. He has authored several papers on labour relations practice in Ontario, and actively participates in the preparation of the labour law continuing education programme of the Law Society of Upper Canada. Mr. Freedman is an instructor in the Public Law section of the Law Society's Bar Admission Course and also acts as an arbitrator.

R. A. (RON) FURNESS *Vice-Chair*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his LL.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chair in 1969.

OWEN V. GRAY *Vice-Chair*

Mr. Gray joined the Board as a Vice-Chair in October, 1983. He is a graduate of Queen's University, Kingston (B.Sc. Hons, 1971) and the University of Toronto (LL.B. 1974). After his call to the Ontario Bar in 1976, Mr. Gray practised law with a Toronto law firm until his appointment to the Board.

ROBERT J. HERMAN *Vice-Chair*

Mr. Herman was appointed a Vice-Chair of the Board in November, 1985, and was at that time a Solicitor for the Board. He is a graduate of the University of Toronto (B.Sc. 1972, LL.B. 1976) and received his LL.M. from Harvard University in 1984. Mr. Herman has taught courses in various areas of law, both at Ryerson Polytechnical Institute and the Faculty of Law, University of Toronto.

ROBERT D. HOWE *Vice-Chair*

Mr. Howe was appointed to the Board as a part-time Vice-Chair in February, 1980 and became a full-time Vice-Chair effective June 1, 1981. He graduated with a LL.B. (gold medallist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 he was a law professor of the Faculty of Law, University of Windsor. From 1977 until his

appointment to the Board, he practised law as an associate of a Windsor law firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator. During May-August, 1984, Mr. Howe served as Chairman of the Board in an acting capacity.

PATRICIA HUGHES *Vice-Chair*

Patricia Hughes is a graduate of McMaster University (B.A. Hons., 1970; M.A., 1971) and the University of Toronto (PH.D., 1975, in Political Economy). After teaching political science for four years at Nipissing University College in North Bay, Dr. Hughes entered Osgoode Hall Law School. She was called to the Ontario Bar in 1984. As counsel in the Policy Development Division of the Ontario Ministry of the Attorney General, she assessed Ontario legislation in light of the requirements of the *Canadian Charter of Rights and Freedoms*, with particular responsibility for pension legislation. She has researched, lectured and published in Canadian politics, feminist analysis, the Charter of Rights, and pay equity. Dr. Hughes was appointed to the Board as a Vice-Chair in April, 1986.

PAULA KNOPF *Vice-Chair*

Mrs. Knopf joined the Board as a part-time Vice-Chair in August, 1984. She graduated with a B.A. from the University of Toronto, 1972, and LL.B. from Osgoode Hall Law School, 1975. Upon her call to the Ontario Bar in 1977, she practised law with a Toronto law firm briefly before commencing her own private practice with emphasis in the area of labour relations. A former member of the faculty of Osgoode Hall Law School, Mrs. Knopf is an experienced fact-finder, mediator and arbitrator.

JUDITH McCORMACK *Vice-Chair*

Ms. McCormack was appointed to the Board as a Vice-Chair in 1986. She did her undergraduate work at Simon Fraser University, and graduated with an LL.B. from Osgoode Hall Law School in 1976. Upon her call to the Bar in 1978, she practiced labour law for the next eight years, first with a Toronto law firm and later as an in-house counsel. In 1986 received her LL.M. in labour law from Osgoode Hall Law School. Ms. McCormack is the author of a number of articles on labour relations and has lectured in this area.

KATHLEEN O'NEIL *Vice-Chair*

Ms. O'Neil, a graduate of the University of Toronto (B.A. 1972) and Osgoode Hall Law School (LL.B., 1977) was a Vice-Chair of the Workers' Compensation Appeals Tribunal prior to her appointment to the Board in January, 1988. She has worked as an arbitrator, has had a private practice in nursing and labour relations law, worked as staff lawyer to nurses' and teachers' associations, served as a member of the Ontario Crown Employees Grievance Settlement Board and chaired the justice committee of the National Action Committee on the Status of Women.

KEN PETRYSHEN *Vice-Chair*

Mr. Petryshen was appointed a Vice-Chair in June, 1986. He is a graduate of the University of Saskatchewan, Regina (B.A. Hons., 1972) and Queen's University, Kingston (LL.B. 1976). After articling with the Ontario Labour Relations Board and after his call to the Bar in 1978, Mr. Petryshen practised law as a staff lawyer for the Teamsters Joint Council, No. 52. Prior to his appointment as a Vice-Chair, Mr. Petryshen was a Board Solicitor.

NORMAN B. SATTERFIELD *Vice-Chair*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chair. Mr. Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He was involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years prior to his appointment as a Vice-Chair.

IAN C.A. SPRINGATE *Vice-Chair*

Mr. Springate was originally appointed a Vice-Chair of the Board in May of 1976. He served as the Board's Alternate Chair from October 1984 to February 1987. He has degrees of B.A. with distinction (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chair. Mr. Springate taught in the M.B.A. programme at McMaster University on a part-time basis as a special lecturer in industrial relations from 1973 to 1978. From February 1984 to January 1985, he served as Acting Chairman of the Crown Employees Grievance Settlement Board. He has also served as a Board of Inquiry under the *Human Rights Code* and as a Referee under the *Employment Standards Act*. Mr. Springate reverted to part-time Vice-Chair status with the Board in February 1987, and is now engaged primarily as an arbitrator.

INGE M. STAMP *Vice-Chair*

Mrs. Stamp joined the Labour Relations Board in August, 1982 as a full-time Board Member representing management. In September of 1987, she was appointed a Vice-Chair. Mrs. Stamp comes to the Board with many years experience in construction industry labour relations. She also represented the Industrial Contractors Association of Canada during province-wide negotiations as a member of several employer bargaining agencies.

GEORGE T. SURDYKOWSKI *Vice-Chair*

Mr. Surdykowski joined the Board as a Vice-Chair in June, 1986. He is a graduate of the University of Waterloo (B.E.S., 1974) and Osgoode Hall Law School (LL.B. 1980). After his call to the Ontario Bar in 1982, Mr. Surdykowski practised law in Toronto until his appointment to the Board.

SUSAN TACON *Vice-Chair*

Susan Tacon was appointed to the Board as a Vice-Chair, in July 1984. Her educational background includes a B.A. degree (1970) in Political Science from York University and LL.B. (1976) and LL.M. (1978) degrees from Osgoode Hall Law School specializing in the labour relations area. Ms. Tacon taught a seminar in collective bargaining and grievance arbitration at Osgoode Hall Law School for several years and also lectured there in legal research and writing. She has several publications to her credit including a book and articles in law journals and is an experienced arbitrator.

Members Representative of Labour and Management

BROMLEY L. ARMSTRONG

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in February of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr. Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board. Mr. Armstrong was honoured by the Government of Jamaica when he was appointed a Member of the Order of Distinction in the rank of officer, in the 1983 Independence Day Civil Honours List, and the City of Toronto Award of Merit, March 1984.

CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

FRANK C. BURNET

In December, 1983, Mr. Burnet was appointed a part-time Board Member representing management. After graduating from the University of Saskatchewan (B.A. Economics, 1940) Mr. Burnet was engaged in personnel capacities in several corporations in Ontario and Quebec. In 1970 he joined Inco Ltd., as its Director of Industrial Relations responsible for all Canadian Operations. From 1972 until his retirement in 1982, Mr. Burnet held the position of Vice-President Employee Relations, responsible for employee relations activities in Canada, U.S., U.K., and other foreign operations. The many offices Mr. Burnet has held include: Chairman, National Industrial Relations Committee of the Canadian Manufacturers' Association, 1978-81; Governor and Member of the Executive Committee of the Canadian Centre for Occupational Health and Safety, 1982-83; Member of OECD Joint Labour-Management team studying technological change in the U.S. (1963) and incomes policy in the U.K. and Sweden, (1965).

JACQUELINE CAMPBELL

Ms. Campbell was appointed a part-time Board Member representing management in March, 1986. Ms. Campbell, who holds a B.A. from the University of Ottawa, has a long career in personnel administration with the Ontario Government. In 1980 she was appointed Personnel Commissioner for the City of Scarborough. Ms. Campbell is a former Director and Vice-President of the Personnel Association of Toronto and a current member of the Toronto Chapter Executive of the Institute of Public Administration, the Ontario Government's Classification Rating Committee, Public Service Grievance Board, and the Financial Times Human Resources Advisory Board.

LEONARD C. COLLINS

Mr. Collins was appointed a part-time Member of the Board representing labour in November, 1982. Prior to joining the Board Mr. Collins had been very active in the trade union movement in Ontario. From 1945 to 1960 he held various positions with Local 232 of the United Rubber Workers, including the positions of Vice-President from 1950 to 1954 and President from 1954 to 1960. In 1960 he was appointed International Field Representative for the United Rubber Workers and later served as acting Director of District 6.

WILLIAM A. CORRELL

A graduate of McMaster University (B.A. 1949), Mr. Correll was appointed in January, 1985, as a part-time Board Member representing management. In January 1988 he was appointed a full-time member of the Board. He joined the Board with an impressive background in the personnel field. Having held responsible personnel positions at Stelco, Atomic Energy of Canada Limited and DeHavilland Aircraft of Canada Limited for a number of years, Mr. Correll joined Inco Limited in 1971. After serving as that company's Assistant Vice-President and Director of Industrial Relations, in 1977 Mr. Correll became Vice-President of Inco Metals Company. He was later appointed Vice-President, Inco Ltd. and retired in 1985. He has lectured on personnel and management subjects at community college and university level and has conducted seminars for various management groups. He is active as management representative on boards of arbitration and on various management organizations.

JEFFREY F. DAVIDSON

Mr. Davidson was appointed a full-time Board Member representing management in July, 1987. Mr. Davidson came to the Board with many years in the field of industrial relations, having worked for Supreme Aluminum Industries for nearly twenty years. He began his career there as a customs/traffic co-ordinator, later becoming industrial relations manager. Mr. Davidson was a member of the Canadian Manufacturers' Association and past Chairman of the CMA Task Force on Unemployment Insurance. He died in November, 1987.

MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. Mr. Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he has held include: Director of Labour Relations of the Ontario Federation of Construction Associations; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel; Director of Industrial Relations, Kaiser Canada; Manager of Industrial Relations of the SNC Group; and Executive Director of the Construction Employers Co-ordinating Council of Ontario. Mr. Eayrs is a past Chairman of the National Labour Relations Committee of the Canadian Construction Association, and is presently a vice-chairman of the Joint Labour-Management Construction Industry Advisory Board. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

ANDRE ROLAND FOUCAULT

Mr. Foucault was appointed a part-time Board Member representing labour in January, 1986. A member of the Canadian Paper Workers Union since 1967, he has held several elected positions within that union, including that of first Vice-President. In February 1982, Mr. Foucault joined the staff of the Canadian Paperworkers Union as a National Representative. In 1976 he was appointed to the position of Programmes Co-ordinator of the Ontario Federation of Labour.

W. NEIL FRASER

Prior to being appointed a full-time Board Member representing management on January 1, 1988, Mr. Fraser was executive director of the Canadian, Ontario and Metro Toronto Masonry Contractors Associations. He served as employer spokesman in province-wide collective bargaining for the Bricklayer and Mason Tender Agreements. He represented the masonry industry on a number of technical committees for building code and technical standards. He is a past president, Toronto Chapter Institute of Association Executives, and biographee since 1982 in Who's Who in America.

WILLIAM GIBSON

Prior to being appointed a full-time Board Member representing management in November 1987, Mr. Gibson was Vice-President Industrial Relations for Robert-McAlpine Ltd., a position he had held since 1976. From 1946 to 1976 Mr. Gibson held various other administrative positions in the McAlpine group of companies. He has been Chairman or President of many major Contractors Associations, through which he has been actively involved in the negotiation and administration of collective agreements at the local, provincial and national levels. He was a part-time Board Member representing management from 1978-1984.

PAT V. GRASSO

Appointed a part-time member of the Board representing labour in December, 1982, Mr. Grasso has been active in the labour movement in Ontario for many years. Having held various offices in District 50 of the United Mine Workers of America, he was appointed Staff Representative in 1958, and Assistant to the Regional Director for Ontario in 1965. In 1969, Mr. Grasso became the Regional Director for Ontario and was elected to the International Executive Board. When District 50 merged with the United Steelworkers of America in 1972, he became Staff Representative of the Steelworkers in charge of organizing in the Toronto area. In January 1982, Mr. Grasso was transferred to the District 6 office of the Steelworkers and appointed District Representative in charge of co-ordinating, organizing and special projects.

ALBERT HERSHKOVITZ

Prior to being appointed a part-time Board Member representing labour in September, 1986, Mr. Hershkovitz served as business agent for the Fur, Leather, Shoe and Allied Workers' Union and the Amalgamated Meat Cutters and Butcher Workmen. He has been President of the Ontario Council-Canadian Food and Allied Workers, Vice-President of the Ontario Federation of Labour and Chairman of the Metro Labour Council, Municipal Committee. As well as being Chairman of the Ontario Jewish Labour Committee and Vice-Chairman of the Urban Alliance for Race Relations, Mr. Hershkovitz has served as a member of the Board of Referees of the Unemployment Insurance Commission.

MAXINE A. JONES

A community college teacher of English and Political Science, Ms. Jones was appointed a part-time Board Member representing labour in April 1987. Ms. Jones holds Bachelor degrees in Journalism and Political Science, a graduate degree in the latter, and has completed all but her dissertation for her doctorate. Her union experience is extensive and includes being the most senior member of the Ontario Public Service Union's Provincial Board. In addition, she has extensive grievance arbitration experience in her home city, Windsor. Also in Windsor, Ms. Jones is a member of a number of community agency boards, including the Windsor Occupational Safety and Health Board, and has served in several City Council appointed positions.

JOSEPH F. KENNEDY

Mr. Kennedy is the Business Manager of the International Union of Operating Engineers, Local 793, having served as Treasurer before becoming Business Manager. He has been instrumental in establishing a compulsory training program for hoisting engineers in the Province of Ontario. Mr. Kennedy is a Trustee for the Pension and Benefit Plans of Local 793, as well as a Trustee for the General Pension Plan of the International Union of Operating Engineers in Washington, D.C. He is a member of the National Safety Council, Chicago, Illinois, a member of the Construction Industry Advisory Board for the Province of Ontario, a Director of the Ontario Building Industry Development Board and, since May, 1983, he has been a part-time member of the Ontario Labour Relations Board representing labour.

HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that Union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario 1958-1962; Secretary Treasurer of the same council, 1962-1980; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and member of the Advisory Council on Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

DONALD A. MACDONALD

Prior to being appointed a full-time Board Member representing management in July, 1986, Mr. MacDonald was active in personnel management at Brown & Root Ltd. from 1957 to 1968 and at Lummus Canada from 1968-1981. From 1981 until his appointment at the Board, Mr. MacDonald was President of the Boilermaker Contractors' Association where he was responsible for negotiations, contract administration and liaison with other trade associations. Other activities include Chairman of the Industrial Contractors Association National Committee and Director of the Electrical Power Systems Construction Association.

ROBERT D. McMURDO

Since April of 1984, Mr. McMurdo has served as a part-time Board Member representing management. An honours graduate in business administration (1953) from the University of Western Ontario, Mr. McMurdo has held many industry related offices including: President of the London & District Construction Association, President of the Construction Safety Association of Ontario and President of the Ontario General Contractors Association. He is the President of McKay-Cocker Construction Limited and McKay-Cocker Structures Limited of London and is currently a member of the Ministry of Labour Construction Industry Advisory Board.

TERRY MEAGHER

Mr. Meagher was appointed a part-time Board Member representing labour in October, 1985. From 1970 to 1984, Mr. Meagher served as Secretary Treasurer of the Ontario Federation of Labour. Prior to that he has held the positions of Business Agent, Local 280 of the Beverage Dispensers and Bartenders Union and Executive Secretary to the Labour Council of Metropolitan Toronto. He has also served as Vice-Chairman of the Canadian Labour Congress, Human Rights Committee and member of the Canadian Labour Congress International Affairs Committee.

RENE R. MONTAGUE

In March of 1986 Mr. Montague was appointed a full-time Board Member representing labour. A member of the United Auto Workers for many years, Mr. Montague maintained many responsible positions in the union, including plant chairperson of Northern Telecom. He has extensive arbitration and bargaining experience. In 1985 Mr. Montague was elected to the Executive Committee of the United Way of Greater London and was a member of the Board of Directors and Campaign Committee of the United Way.

JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics as well as an M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second World War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies in several parts of the country. He was a vice-president of Labatt Brewing Company for several years before his retirement in January 1982.

PATRICK J. O'KEEFFE

Mr. O'Keeffe has been a labour representative Member of the Board since 1966 and presently he serves in that capacity on a part-time basis. A long time union activist, he participated in the trade union movement in Britain and Australia prior to his arrival in Canada. In Canada, Mr. O'Keeffe was a member of the United Steelworkers of America and the Canadian Union of Public Employees. He has held positions of steward, secretary and president of various local unions. He is a past National Representative of C.U.P.E. and presently holds the office of Ontario Regional Director of C.U.P.E., and is also a Vice-President of the Ontario Federation of Labour.

WILLIAM S. O'NEILL

In March, 1986 Mr. O'Neill was appointed a part-time Board Member representing management. Since 1969 Mr. O'Neill has held many responsible positions with Ontario Hydro, including Senior Construction Labour Relations Officer and Manager of Construction Labour Relations. He is a past Secretary-Treasurer of the Electrical Power Systems Construction Association and is currently its General Manager. He is also a director at large of the Construction Owners Council of Ontario.

DAVID A. PATTERSON

Mr. Patterson was appointed a full-time Board Member representing labour in April, 1986. A member of the United Steelworkers of America for many years, he was elected President of Local 6500 in 1976 and re-elected 1979 and 1981. In 1981 Mr. Patterson ran and was elected Director, District 6 of the United Steelworkers of America. He served in that position until March 1986. He was elected Vice-President at large at the 1982 CLC convention and re-elected to that position in 1984. He has served as Chairman of the Safety and Health Convention Committee (CLC) as well as a member of the Board of Directors of the Mine Accident Prevention Association of Ontario. He was a member of the Ontario Labour Management Study Group.

HUGH PEACOCK

Mr. Peacock was appointed a full-time Board Member representing labour in November, 1986. Prior to joining the Board Mr. Peacock was Legislative Representative for the Ontario Federation of Labour which enabled him to gain broad knowledge of the legislative and political process in

Ontario as well as its labour relations system. He came to the OFL after having been the Woodworkers' Education and Research Representative (1960-1961), worked in the UAW Canada Research Department (1962-1967), and having been a negotiator for the Toronto Newspaper Guild (1972-1976). Mr. Peacock was a member of the Ontario Parliament, representing Windsor West (NDP) from 1967 to 1971. He is currently a member of various social and community organizations.

ROSS W. PIRRIE

Mr. Pirrie was appointed a part-time Board Member representing management in January, 1985. Having been employed by Canadian National Railways for ten years, in 1960 he joined Shell Canada Limited. At Shell Canada, Mr. Pirrie held a wide range of managerial positions in general management, occupational health, human resources and industrial relations before retiring in 1984. Mr. Pirrie holds the degree of B.A. (Psychology) from the University of Toronto.

JOHN REDSHAW

Mr. Redshaw was appointed a full-time Board Member representing labour in July, 1986. From 1966 to 1971 he served as business representative for Local 793, International Union of Operating Engineers. He was area supervisor for Hamilton, St. Catharines and Kitchener, a position which included organizing and negotiation of all collective agreements in the construction industry. From 1979 until his appointment to the Board Mr. Redshaw worked in the Union's Labour Relations Department, first in Toronto and then Cambridge. He has been Secretary-Treasurer of the Canadian Conference of Operating Engineers and Secretary of the Waterloo, Wellington, Dufferin, Grey, Building Trades Council.

KENNETH V. ROGERS

Mr. Rogers was appointed in August, 1984, as a part-time Board Member representing labour. From 1967-1976, he was a representative with the International Chemical Workers Union and served as Secretary-Treasurer of the Canadian Chemical Workers Union during 1976-1980. Since the Energy and Chemical Workers Union was founded in 1980, Mr. Rogers has been its Ontario Co-Ordinator. He is a former Vice-President of the Ontario Federation of Labour.

JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and an LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

JUDITH A. RUNDLE

Ms. Rundle was appointed a full-time Board Member representing management in July, 1986. She joined the Board with an impressive background in the personnel field. After the University of Toronto, Ms. Rundle held responsible personnel positions at Toronto General Hospital and National Trust Company. Ms. Rundle joined the Riverdale Hospital in 1979, first as Assistant to the Director of Personnel and subsequently as Assistant Administrator of Human Resources. From January 1986 until her arrival at the Board, Ms. Rundle was employed as Acting Director of Personnel and Labour Relations at Toronto General Hospital. She was active as management representative on boards of arbitration and has been a member of various management organizations.

JANIS SARRA

Ms. Sarra was appointed a full-time Board Member representing labour in July, 1986. She was Human Rights Director of the Ontario Federation of Labour. Ms. Sarra has an M.A. in political economy from the University of Toronto and has been an instructor in occupational health and safety for the Centre for Labour Studies, Humber College. From 1979 to 1984 she was a Research Associate, Labour Relations and Women's Equality for the NDP Caucus, Legislative Assembly. Ms. Sarra was Executive Assistant to a Toronto city alderman from 1976 to 1979 and was formerly a researcher, Health Advocacy Unit, City of Toronto. She has been an active member of OPSEU, CUPE and OPEIU, holding offices such as steward, chair health and safety committee and negotiating team.

GORDON O. SHAMANSKI

A graduate of the University of Chicago (B.A.), Mr. Shamanski was appointed a full-time Board Member representing management in July, 1986. He joined the Board with an impressive background in the personnel field, having been Personnel Manager at Rothmans of Pall Mall Canada Ltd., 1963-1970, and at Canadian Motor Industries Holdings Limited, 1970-1971. From 1972 to 1985 Mr. Shamanski was Corporate Director of Personnel and Industrial Relations at Domglas Inc. where he was responsible for labour contract negotiations, labour board hearings, compensation and benefits design, health and safety, management development and training, and staff recruitment. He has lectured in industrial relations and is a member of various management organizations.

ROBERT M. SLOAN

Prior to being appointed a full-time Board Member representing management in November, 1986, Mr. Sloan was employed by Alcan as Corporate Industrial Relations Manager and Occupational Health and Safety Co-ordinator. In this capacity Mr. Sloan, a graduate of Sir George Williams University (B.A.) was directly involved in all phases of the personnel and labour relations scene including representation in various management organizations.

MALCOLM STOCKTON

Mr. Stockton was appointed a part-time Board Member representing management in October, 1985. He earned a law degree from Osgoode Hall Law School in 1973 and was called to the Ontario Bar in 1975. Since then he has engaged in the practice of law in Niagara Falls, Ontario. He has served as a fact-finder, mediator, and arbitrator for the Education Relations Commission since 1976.

E.G. (TED) THEOBALD

Mr. Theobald was appointed as a part-time Board Member representing labour in December, 1982. From 1976 to June, 1982, he was an elected member of the Board of Directors of O.P.S.E.U., and during this period served a term as Vice-President. A long time political and union activist, Mr. Theobald has served as President and Chief Steward of a 600 member local union. He has served on numerous union committees and has either drafted or directly contributed to several labour relations related reports. He is experienced in grievance procedure and arbitration.

JANET TRIM

Appointed a part-time Board Member representing management in May, 1987, Ms. Trim comes to the Board with many years of experience in construction labour relations. Representing the General Contractors, she has been a member of negotiating committees formed to bargain provincial collective agreements. She had also served for several years as a management trustee on a Welfare and Pension Trust Fund.

W.H. (BILL) WIGHTMAN

Mr. Wightman was first appointed to the Board in 1968, becoming a full-time member in 1977, and resigned from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently, he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the Organization for Economic Co-operation and Development in Paris, and as a member of the Canada Manpower and Immigration Council, the Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He is a graduate of Clarkson University (BBA '50) and Columbia University (MS '54).

JAMES P. WILSON

For a number of years Mr. Wilson was the Director of Operations for a multi-trade contractor in the construction industry. Prior to joining the Board he served as the Labour Relations Consultant to the Electrical Contractors Association of Ontario for 10 years. Mr. Wilson has served as the President of the Electrical Contractors Association, a Director of the Toronto Construction Association, Vice-President of the Ontario Federation of Construction Associations and Director of the Toronto Electrical Club. In January of 1981, Mr. Wilson was appointed as a full-time Board Member representing management. Mr. Wilson passed away in September, 1987.

NORMAN A. WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of the Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.

DANIEL WOZNIAK

Mr. Wozniak was appointed a part-time Board Member representing management in March, 1987. A graduate of the University of Manitoba (B.A.) and the Manitoba Law School (LL.B.), Mr. Wozniak has held various personnel-related positions. He started his business career with DuPont of Canada Ltd. where he held various positions in the employee relations department. In 1960, he joined Standard Brands Limited (now known as Nabisco Brands Ltd.) in Montreal and was promoted to the position of Vice-President, Personnel and Industrial Relations. In 1976 he joined Canada Wire and Cable Ltd. in Toronto where he held the position of Vice-President, Personnel and Industrial Relations until his retirement in 1987. A member of various management organizations, Mr. Wozniak served as the Deputy Employer's representative to the 72nd ILO Convention in Geneva (1986).

V HIGHLIGHTS OF BOARD DECISIONS

Incumbent union cannot intervene in raiding union's access application

In this case, the applicant union sought a direction pursuant to s.11 allowing access to the respondent employer's property for the purpose of attempting to persuade the employees to join the applicant. The employees resided on the property of the respondent. The incumbent union sought to intervene for the purpose of opposing the access order. The Board held that while a direction under s.11 does limit or modify an employer's pre-existing property rights, the legal rights of the intervener would not be affected in any way nor would its rights under the Act impeded in any way. The concern of the incumbent did not amount to a legal foundation for intervention, even if it had an "interest" in a general sense. In addition, the Board found that s.11 is applicable to "raids", in which one union is seeking to displace another. The right of access is just as important in a raid situation as in the case of an unorganized group of employees, perhaps even more important because the incumbent will have an established presence and access must be available so that a rival can orchestrate its organizing campaign to capitalize on the "open period". The incumbent was denied the right to intervene in the proceedings. *Domtar Inc.*, [1987] OLRB Rep. Apr. 485.

Remedy for ongoing breach of successive collective agreements limited to current and most recently expired agreement

In this s.124 construction industry grievance, the Board found that the respondent employer had breached each of a number of successive two year collective agreements by failing to make the appropriate benefit contributions and dues deductions. The applicant was unaware of the breaches throughout this period. The employer argued that the Board had no jurisdiction to remedy a breach of any collective agreement prior to the one which had just expired when the grievance was referred to the Board, relying on the award of a board of arbitration in *Re Goodyear Canada Inc.* (1980), 28 L.A.C. (2d) 196. In rejecting this argument, the Board noted that its jurisdiction comes not from an appointment under a collective agreement but from s.124 of the Act, subsection (3) of which gives the Board "exclusive jurisdiction to hear and determine the difference or allegation raised in the grievance referred to it". The Board also held that the opening words of subsection 124(1) relieve the referring party from compliance with any collective agreement requirement that steps be taken after the delivery of the written grievance before there can be a referral to arbitration. However, those words do not relieve the referring party from the consequences of non-compliance with an agreed time limit for the delivery of a written grievance. Nevertheless, the Board concluded that by virtue of subsections 124(3) and 44(6) of the Act, it has the power to extend the time limit set out in the relevant collective agreements unless the agreements expressly state that subsection 44(6) does not apply. None of them did. Grounds to extend the time limit under subsection 44(6) exist where a grievor does not know and could not be reasonably expected to have known of the grievous act within the time limit set out, subject only to whether this will cause substantial prejudice to the opposite party. The Board was satisfied that the time limits should be extended in this case. In considering how far back to extend the remedy, the Board found that although the lack of prior knowledge of the factual basis of the grievance obviates the application of conventional doctrines of *estoppel* and *laches*, the underlying labour relations rationale for importing the doctrine of *laches* into the arbitration of disputes arising under

collective agreements has greater scope. Even though a party is unaware of the *facts* on which the claim is based, it may be unfair to permit the party to pursue the claim, if, at the time those facts occurred, it acted indifferently about the *rights* on which its claim is based. It held that the applicant chose to act indifferently about the method and accuracy of the employer's calculation of benefits and dues deductions. After taking a number of factors into account, the Board concluded that the remedy should only extend to breaches of the current agreement and the most recently expired collective agreement. *Ontario Hydro*, [1987] OLRB Rep. Apr. 574.

Industrial trade union may apply for certification in respect of construction industry employees

In this application for certification in the construction industry, the issue was whether an industrial trade union can represent construction industry workers of a construction industry employer. The applicant union conceded that it did not fall within the definition of "trade union" in s.117(f), as it did not pertain to the construction industry. Section 119 of the Act states, in part, that where a trade union applies for certification as bargaining agent of the employees of an employer, the Board shall determine the appropriate bargaining unit. The respondent employer argued that the words "employer" and "employees" in s.119 are defined in s.117 and therefore only a union within the meaning of s.117(f) could apply for certification pursuant to s.119. The respondent also referred to s.144 and asserted that only trade unions as defined by s.117(f) may apply for certification in relation to the industrial, commercial and institutional (ICI) sector of the construction industry.

The Board rejected these arguments. Section 144(5) allows a trade union that is not represented by a designated or certified bargaining agency to bring an application for certification. The definition of "trade union" in s.117 applies only to ss. 117-136. In addition, the term is not defined in section 137, the definition section relating to province-wide bargaining. The only definition left is that in s.1(1)(p) and the applicant is a trade union as defined by that section. As the applicant did not meet the s.117(f) definition, it could not take the benefit of the construction industry provisions of the Act, in particular s.119. However, nothing in the Act prohibited the applicant from seeking certification of construction industry employees of a construction industry employer, although neither the applicant nor the employees would be part of the province-wide scheme. If the applicant were certified, section 146 would not preclude it from negotiating a collective agreement in the ICI sector because the union is not an affiliated bargaining agent. The applicant could bring an application for certification under the general provisions of the Act. *Pickering Welding & Steel Supply*, [1987] OLRB Rep. Apr. 595.

Standard of just cause for discharge may be different in construction industry than in other industries

This case involved the discharge of an employee in the construction industry for walking off the job without obtaining permission and without giving any reasons. The applicant argued that the employee's discharge was "not for just cause" and consequently was contrary to the collective agreement in operation between the employer and the applicant. The respondent argued that the misconduct of the grievor was sufficient to warrant the discharge, considering events that occurred before the discharge and the nature of the employment relationship in the construction industry. The majority of the Board examined whether there are aspects of the construction industry which impact on the standard of just cause in matters of discipline. It adopted the approach set out in *Canadian Engineering and Contracting Co. Ltd.*, [1983] OLRB Rep. July 1017. That case found that the employer-employee relationship in the construction industry is not a close one, and is not comparable with relationships that arise between employers and employees in an industrial setting. Employment relationships are transitory and workers will be referred from the hiring hall and employed for short periods of time without the kind of pre-selection which would be undertaken

by an industrial employer before engaging workers on a long-term basis. The Board in that case accepted the need for a certain amount of realism and arbitral restraint in determining what constitutes just cause for discharge in the construction context, but went on to hold that the considerations to be applied need not be totally different from those applied in other industries. The majority in this case noted that the longer an employee has worked and is expected to work on a construction project, the more likely an arbitrator will apply considerations which pertain to industry in general when assessing whether an employer has established just cause for discharge. After an analysis of the case before them, the majority concluded that the employee's discharge was without just cause and a five day suspension was substituted for the discharge. *Comstock International Ltd.*, [1987] OLRB Rep. May 667.

Refusal to agree to just cause clause in collective agreement leading Board to direct settlement of first contract by arbitration

This case involved an application brought under s.40a of the Act (first contract arbitration). The applicant union had been engaged in protracted negotiations with the respondent employer in an attempt to reach a first collective agreement. Negotiations collapsed over the wording of the dismissal clause. The respondent desired a clause which would allow dismissal without just cause upon payment in lieu of notice. The applicant would accept only dismissal on just cause. The majority considered whether the respondent's position was "uncompromising" and "without reasonable justification". There was little difficulty in finding the employer uncompromising; it had maintained the same position on the just cause clause for over two years. There was greater difficulty in defining "reasonable". The majority held that the term must mean something more than simply a rational relationship between a bargaining position and a party's self-interest. Rather, the legislation drew the majority into an assessment of whether a given proposal or position is reasonable in objective terms. This is so because reasonableness is a relative concept which depends largely if not entirely upon the context in which the examination is made. In considering s.40a(2)(b), this will include both the general landscape of labour relations and the specific labour relationship between the parties. In many cases such an assessment will also require the weighing and balancing of the opposing interests of the parties which they seek to pursue by way of their negotiating positions. The determination of intrinsic reasonableness of a negotiating position under s.40a represents a departure from the jurisprudence which has evolved under s.15, the duty to bargain in good faith. That jurisprudence reflects a conscious intention to avoid reviewing the fairness or reasonableness of a negotiating proposal as an exercise in itself. Rather, the Board's interest under a s.15 inquiry centers on whether a manifestly unreasonable proposal indicates the presence of bad faith or a failure to make a collective agreement. In assessing the case at hand the majority held, after balancing the need for convenience of the respondent against the job security of employees, that the respondent's insistence on the termination provision was without reasonable justification.

The respondent argued that the conditions of 40a(2)(b) were not met because bargaining broke down, at least in part, due to the equally uncompromising position of the applicant. The majority, in rejecting this argument, held that there is no requirement in s.40a(2)(b) that the respondent's position be the *sole* cause of the failure of negotiations. Rather, the emphasis is on the existence of a causal connection between the uncompromising position taken by the respondent and the parties' lack of success in bargaining. In addition, there is no particular threshold test of the applicant's conduct which must be met before relief will be granted.

The majority also held that the dismissal of an earlier s.15 complaint did not prevent it from finding that the conditions of s.40a had been met. Section 40a expressly contemplates that its criteria may be met in the absence of bad faith bargaining by the words "irrespective of whether section 15 had been contravened". In particular, the provisions of s.40a(2)(b) are not necessarily

predicated on any grievous conduct on the part of the employer. There is no requirement of bad faith or anti-union animus (although this may be relevant) and a s.40a direction to settle a first contract by arbitration is not a penalty visited upon an employer. Rather, s.40a as a whole represents the identification of a series of situations in which the Legislature has determined that a malfunctioning labour relationship requires a special mechanism to repair or strengthen it. The Board, in this case, directed the settlement of a first collective agreement by arbitration. *Formula Plastics Inc.*, [1987] OLRB Rep. May 702.

Where collective agreement expires before business sold, employees have no right to employment after business re-opens

In this case, a tavern was sold by the original owner to a company (the first owner) which then leased the business to two individuals in trust for a corporation to be incorporated (the respondent). Both of the transactions were held to be a sale of a business. At the time of the first sale, the tavern was closed for renovations and the employees became unemployed. When the tavern re-opened approximately two and one half months later, they were not offered employment. The employees were members of the complainant, which was a party to a collective agreement with the original owner. That agreement terminated by the time the second sale occurred. The complainant alleged that the respondent had breached s.66 and other sections of the Act by “refusing to employ members of the Union”. The majority examined the consequences of a sale of a business under s.63. It determined that since no collective agreement was in operation at the time of the second sale, s.63(3) controlled the outcome. Section 63(3) preserves only the trade union’s right to act as exclusive bargaining agent for persons employed by the successor in “the like bargaining unit in that business”. It does not preserve the right to employment of individuals. The majority then turned to the complainant’s allegation that the respondent had breached s.66(a) of the Act which states, in part, that no employer shall “refuse to employ or to continue to employ” a person because the person was or is a member of a trade union or was or is exercising any other rights under the Act. As the majority found that the grievors were not entitled to employment, the threshold question was not whether the respondent had refused to continue an employment relationship but whether it had refused to enter into one. There can be no refusal to enter into an employment relationship unless a grievor has applied for employment. The grievors did not formally apply to the respondent for employment until a number of months after the second sale. However, the complainant alleged that the requisite applications could be found in conversations before written applications were submitted. The Board rejected these arguments. When the grievors did submit written applications, none were offered employment. However, as there was no evidence that the respondent was considering hiring anyone at that time, nor that any other person was hired thereafter, even if s.66(a) had been breached, there was no evidence of loss. The majority declined to order that the Act had been violated or that a notice be posted regarding employee rights. Assuming such an order could be made, it was held that no useful purpose would be served in making the declaration because the employer could not be expected to engage in any future employment because it had gone bankrupt. *New Holiday Tavern*, [1987] OLRB Rep. May 753.

Voter eligibility rules in construction industry clarified

This case involved an application under s.57(2) of the Act to terminate the respondent union’s right to represent a bargaining unit in the industrial, commercial and institutional (ICI) sector of the construction industry. The applicant employee was the sole member of the bargaining unit on the date the vote was ordered and the date the vote was held. The respondent argued that the applicant was not entitled to vote because it had not been established that he had been at work for the intervener employer in the ICI sector of the construction industry at the times material to

voting eligibility. The respondent suggested that the material times include not only the date the vote is ordered and the date the vote is taken, but the period of time between those dates as well.

The Board contrasted the rules of voter eligibility in the construction industry with those in non-construction employment, and held that so long as employment in the voting constituency is not terminated, in neither case does the Board require an individual to be at work for any minimum period of time, or at all, during the period between the two material dates in order to be eligible to vote. In order to ensure that the employees in a bargaining unit have an opportunity to participate in a representation vote, the Board has formulated different approaches in construction industry and non-construction industry employment. In non-construction matters, a person need not be “at work in” the voting constituency at any time so long as s/he is “employed in” it. In construction matters, the same eligibility terminology has been made equivalent to “at work in” so that a person must be at work in the voting constituency on both the date of the Board decision ordering the vote (or the terminal date in the case of a pre-hearing vote) and on the day the vote is taken in order to be eligible to vote. The Board held the applicant was entitled to vote. *City Plumbing (Kitchener) Limited*, [1987] OLRB Rep. June 810.

Preparation of mail to be sent through Canada Post within provincial jurisdiction

In this application for certification, the respondent employer argued that the labour relations of its employees fell within federal jurisdiction. The respondent was in the business of preparing its customers’ materials for mailing in accordance with Canada Post requirements. The customers’ material was picked up at Canada customs, processed, sorted into bags obtained from Canada Post, and labelled in accordance with Canada Post requirements. These were then placed in containers obtained from Canada Post, which were also labelled in accordance with Canada Post requirements. Canada Post trucks picked up these containers at the respondent’s premises at a loading dock built to Canada Post’s specifications.

The Board found that the respondent was a user of Canada Post’s services, not a performer of those services. The respondent was functionally interposed between Canada Post’s postal services and its customers and was, in effect, a mail service broker. The Board found that the relationship between Canada Post and the respondent was analogous to that between a federally regulated carrier and a freight forwarder who solicits freight from customers and arranges with the carrier for the delivery of freight in volume. This was held to be within provincial jurisdiction. After reviewing the merits of the application, a certificate was issued to the applicant. *MIS (Canada) Holdings Ltd.*, [1987] OLRB Rep. June 865.

Bargaining unit restricted to single client in non-vending food industry

In this case the applicant applied for certification regarding the respondent’s operations in Chatham, Ontario. The respondent was engaged in the non-vending food service industry. The applicant argued that the appropriate bargaining unit should consist of all employees of the respondent in the municipality, while the respondent asserted that the bargaining unit should be restricted to the address or name of the respondent’s client in Chatham. The Board found that there has developed in the Ontario non-vending food service industry a widespread practice of parties agreeing to bargaining units which are confined to an employer’s operations in respect of a particular client. The only instance brought to the attention of the Board where a municipal-wide bargaining unit was granted was *T.R.S. Food Services Limited*, [1980] OLRB Rep. Apr. 542. In that case, the majority concluded that where the employer has but one location in a municipality, the geographic scope of the bargaining unit should be defined by reference to the municipality in which the employer is located. However, they also noted that in circumstances where an employer has two or more locations in a municipality, additional considerations relating to the actual

community of interest shared between particular locations may become relevant. Although the respondent in the instant case did not have two (or more) locations in Chatham at the time of the application, it had signed a second contract a month before the application. After reviewing the facts of the case, the majority found that the employees at the two locations in Chatham did not share a sufficient community of interest to warrant their inclusion in a single bargaining unit. Although some of the work at the two locations was similar and required the exercise of similar skills, a number of conditions of employment differed and there was no functional interdependence between the two locations. The Board held that the bargaining unit be defined in terms of the name of the client of the respondent in Chatham. *VS Services Ltd.*, [1987] OLRB Rep. June 931.

Board decision concerning status of union local held to be an *in rem* decision

The General Contractors' Division of the Construction Association of Thunder Bay made an application under section 135(2a) of the *Labour Relations Act* for a declaration that the collective agreement between the applicant and Local 2693 of the United Brotherhood of Carpenters and Joiners was unlawful and, being an agreement other than a provincial agreement, was contrary to section 146(1) of the Act and hence was not binding upon the applicant or any of its members. The applicant argued that the decision of the Board in *EKT Industries Inc.*, [1987] OLRB Rep. Mar. 352, that Local 2693 was an affiliated bargaining agent within the meaning of section 137(1)(a) of the Act and that Local 2693 could not lawfully represent construction labourers in the industrial, commercial and institutional sector of the construction industry, was a decision *in rem*.

The Board considered the doctrine of *res judicata*, stating that *in rem* is more correctly described as a component of *res judicata* than as a doctrine in its own right. This means that all other elements of *res judicata* must pertain; *in rem* applies only if the parties are not identical to the parties in the previous proceeding and the decision can be characterized as an *in rem* decision. *In rem* can be summarized as follows: (1) It is a component of *res judicata*. This means that all of the other constituent elements of *res judicata* must pertain. (2) An *in rem* decision is a declaration, definition or determination of the status or jural relation of a person or thing to the world generally. (3) While it is not entirely clear whether the grounds upon which a decision is based are *in rem* or *in personam*, the better view is that the grounds are *in rem*. There was no suggestion that Local 2693 had in any way changed since the facts referred to in the *EKT* decision or that Local 2693 had any evidence or argument to present to the Board which it had not presented to the Board in connection with that decision. Therefore, having regard to the analysis of the principle of *res judicata* and the component of *res judicata* known as *in rem*, the Board found that the *EKT* decision was a decision *in rem*.

Having regard to the foregoing and pursuant to the provisions of section 135(2a) of the Act, the Board declared that the collective agreement between the General Contractors' Division of the Construction Association of Thunder Bay and the Lumber and Sawmill Workers' Union, Local 2693 was contrary to subsection 146(1) of the *Labour Relations Act* and, accordingly, was null and void and of no force and effect and was not binding upon the General Contractors' Division of the Construction Association of Thunder Bay or any of its members. *Construction Association of Thunder Bay Inc.*, [1987] OLRB Rep. July 976.

Implementation of pension plan over the objections of the employees who would be covered by the plan not a breach of the union's duty of fair representation

An employee brought a complaint in which it was alleged that the respondent union had breached its duty of fair representation by implementing a pension plan over the objections of most of the employees who would be covered by the plan.

The Board held that the trade union as the legal bargaining agent of the employees has a status quite different from that of an agent in a commercial context. In particular it is not required to implement the views of the majority of employees as though they were its principals. The prohibition against arbitrary conduct in section 68, the duty of fair representation, requires that a union take into account the views of employees. Once that is done, however, the union is entitled, in light of other relevant considerations, to adopt a course of action other than that favoured by most employees. Although the complainant in this case could possibly have obtained a higher personal return on money now being contributed to the pension fund, other employees closer to retirement and younger employees, who would not in fact invest the money for their retirement years if they had immediate access to it, would benefit from the establishment of a plan. Given these considerations it was reasonable for the respondent to conclude that the long run interests of bargaining unit employees as a whole would benefit from the introduction of a pension plan, and that one should be implemented even over the objections of the employees themselves. The decision was not prompted by bad faith or discriminatory intent or made in an arbitrary fashion and accordingly no breach of section 68 had been made out. *John Daniell*, [1987] OLRB Rep. July 990.

Employer cannot rely on the ostensible authority of negotiating committee where employer knows that union is unwilling to sign collective agreement

The Ontario Nurses' Association (O.N.A.) filed a complaint against Oakridge Villa Nursing Home alleging violations of sections 15 and 79, the duty to bargain in good faith and the freeze provisions, of the *Labour Relations Act* and section 13 of the *Hospital Labour Disputes Arbitration Act*. The employer in turn alleged that O.N.A. had violated sections 15 and 70 of the *Labour Relations Act*. In addition, there was a referral by the Minister pursuant to section 107 of the *Labour Relations Act* about the Minister's authority to appoint a conciliation officer in this case.

It had always been O.N.A.'s practice that collective agreements entered into bore the signature of a centrally employed employment relations officer. In this particular case negotiations broke down on the question of parity. One of O.N.A.'s traditional bargaining objectives had been parity for nurses in nursing homes with wages received by nurses in hospitals. O.N.A. had consistently refused to enter into a collective agreement if parity could not be achieved, preferring to allow the matter to go to interest arbitration. In the two previous rounds of bargaining at Oakridge, the refusal to grant parity had resulted in arbitration, a process which had in each case resulted in long delayed awards and no parity. The local bargaining unit members of the negotiating committee were anxious to accept the employer's wage proposals rather than await the outcome of an interest arbitration. The O.N.A. employment relations officer had remained adamant that she had no mandate to accept anything less than parity. The local bargaining unit members then met with the employer, without the O.N.A. employment relations office, and signed the agreement notwithstanding the employer's bargaining experience with O.N.A., which ought to have alerted it, at the very least, to being wary of accepting the bargaining unit members' assertions of authority to bargain. When the O.N.A. employment relations officer had been notified of the signing of a memorandum of settlement with the employer, she wrote the employer advising him that failure to bargain with the association was contrary to the *Labour Relations Act* and that any agreement signed in the absence of a representative of the association was invalid. Despite this letter, the employer signed an alleged collective agreement at a later date.

The Board held that given the employer's experience with and knowledge of O.N.A.'s negotiating practices, particularly in light of the letter from the O.N.A. employment relations officer, Oakridge could not rely on the ostensible authority of the bargaining unit members of O.N.A.'s negotiating committee. In the absence of O.N.A.'s signature through its employment relations officer, O.N.A. was not a party to the agreement and therefore, no collective agreement existed between the parties. What had been signed was a document executed by the employer,

which had legal authority to sign, and the local negotiating committee which, according to O.N.A.'s constitution, did not. The document was therefore null and void as a collective agreement and not binding on O.N.A. The employer was held to have bargained in bad faith in signing the document given its past experience with O.N.A., since it ought to have known that it was circumventing the union in signing with the bargaining unit members. On the other hand, O.N.A. was not held to have violated the duty to bargain in good faith for refusing to acknowledge as legal and binding a collective agreement it rightly perceived to be void and contrary to its own constitution. In addition a breach of the freeze provisions was found to have occurred given the employer's implementation of terms and conditions the union had not agreed to and given the Board's finding that there was no valid collective agreement. Finally, the Board found that since there was no collective agreement between the parties, the Minister had the authority to appoint a conciliation officer. *Oakridge Villa Nursing Home*, [1987] OLRB Rep. July 1026.

Lock-out pay provided to employees by the union a compensable loss

In a decision dated December 19, 1986 the Board held that the respondent company had contravened sections 15, 64, 66, 70, and 79 of the *Labour Relations Act* and section 24(1) of the *Occupational Health and Safety Act*. Counsel for the complainant wrote to the Board to request that the complaints be relisted for hearing to resolve outstanding questions regarding damages payable by the respondent.

The complainant asked for compensation with respect to, *inter alia*, the remuneration paid to the president of the local and an international organizer who attended the negotiation sessions with the respondent, and the Board hearings that eventually ended in an arbitrated first collective agreement. The position of the complainant was that those salary expenses were union losses resulting from the respondent's unlawful acts and omissions. The Board held that salaries paid to union officials and costs incurred in assembling materials for use in proceedings before the Board were analogous to legal fees which the Board had consistently refused to award. Negotiating costs, on the other hand, could be compensable in certain circumstances. In this instance the Board awarded the complainant compensation for half of the reasonable negotiating expenses incurred in respect of collective bargaining with the employer, including half of the salaries paid to the three union officials who spent time at the bargaining sessions. Some time was wasted in dealing with proposals for which the respondent had no plausible business justification. However other time was wasted due to the tardiness, non-availability, or lack of preparedness of union representatives.

In respect of printing costs and other expenses associated with a public campaign during the lock-out, the Board distinguished the decision in *Gray-Owen Sound Health Unit*, [1980] OLRB Rep. Feb. 223 in which the expenses incurred by the Ontario Nurses' Association during a lock-out were deemed too remote to be compensable, as they were more related to the union's desire to maintain a favourable image than an attempt to keep the bargaining unit together in the face of employer unfair practices. In this case the Board found that the expenses incurred were intended to keep the unit together in face of the respondent's unfair labour practices, and to mitigate losses by attempting to bring the unlawful lock-out to a swift conclusion. For those reasons the Board was satisfied that the union was entitled to be reimbursed by the respondent for reasonable costs incurred in producing materials such as stickers, leaflets, letterhead, labels, and buttons regarding the lock-out and the boycott campaign mounted by the union.

With respect to the duty of locked-out employees to mitigate their damages, the Board held that by mid-August the continued lack of progress in negotiations in the context of a lock-out which had continued for over three months would have rendered it unreasonable for an employee to continue to refrain from seeking alternate employment on the basis that the lock-out would likely come to an end in the near future. The duty to mitigate would not require a worker to seek

permanent employment elsewhere or to seek alternate employment which would preclude him from picketing the respondent's premises. Any earnings received by employees from other employers during the lock-out would have to be deducted from the sum which they would otherwise have received from the respondent. Extra income earned by an employee's spouse during the lock-out would not be taken into account as it was too remote to be legitimately considered.

The union also sought compensation from the respondent for the lock-out pay which was provided to employees during the unlawful lock-out. The Board held that where lock-out benefits are not paid as compensation for picketing, the lock-out pay is *not* deductible from the amount payable by the respondent to its employees for wage losses suffered during an unlawful lock-out. The Board cited a substantial body of American jurisprudence which supported that conclusion.

Other issues, including damages for loss of opportunity to negotiate a collective agreement and interest rate calculation for complaints filed in different months, were also discussed in the decision. *Burlington Northern Air Freight (Canada) Ltd.*, [1987] OLRB Rep. August 1064.

Board having jurisdiction to award damages for mental distress

The union in this case lodged a section 89 complaint alleging that the grievor had been dealt with by the respondent employer contrary to sections 3, 64, 66, 79(1) and 89(7) of the *Labour Relations Act*. The employer's actions had culminated in the discharge of the grievor. The Board having found unfair labour practice violations awarded the grievor compensation for lost wages. In addition the union asked for general damages for the protracted pattern of threats and harassment to which the grievor had been deliberately subjected. The Board was asked to take into account and remedy the dislocation, inconvenience, and emotional stress associated with the grievor's unlawful treatment. The Board stated that there is some precedent—albeit in other contexts and other forms—for compensation beyond an immediate loss of wages or other economic benefits. The Board went on to state that there is nothing in the statute which would foreclose monetary compensation for these independent breaches of the Act, and that the Board saw no reason to “read in” such a limitation. Nor did the Board see any reason why the Board should be less sensitive than the courts or other tribunals to the possibility that illegal conduct may give rise to a form of general damages. This is not to say that the Board should award compensation in the form of “general damages” simply because it is affronted by the egregious nature of the employer's conduct or the “shocking high-handed and arrogant fashion” in which a particular complainant may have been treated. “Punishment” has no place in assessing compensation under section 89 of the *Labour Relations Act*. However, in this case, because the claim for general damages surfaced only at the hearing convened to calculate the quantum of compensation payable to the grievor, the Board declined to in effect amend its original remedial direction to include a novel general damages claim under the rubric of “implementing” a compensation direction which did not specifically contemplate that kind of claim. *Jacmorr Manufacturing Limited*, [1987] OLRB Rep. Aug. 1086.

Where there has been a history of fragmentation the Board may consider a departmental unit to be appropriate

The union in this case had applied for a bargaining unit comprised of the computer information services department of a newspaper. The respondent publishes a daily newspaper in the Ottawa area, and there were, at the time of application, seven different collective agreements covering employees in various departments of the Citizen. In this application the Guild sought to represent a bargaining unit of employees in one of the few departments remaining unorganized at the Citizen. The Board held that where there has been a prior history of fragmentation (and no

demonstrable serious labour relations problems flowing from that fragmentation) the Board might well be prepared to find appropriate a departmental bargaining unit. The Board went on to hold that a sufficient and strong community of interest existed among the employees in the computer information services department such that a bargaining unit comprised of those employees would be viable for collective bargaining purposes. Next the Board went on to consider whether serious labour relations difficulties would attend a finding that the unit applied for was appropriate. There was no evidence that the Citizen had suffered labour relations difficulties in dealing with its existing bargaining structure for a period of over thirty years. There was no evidence that any labour relations difficulties, serious or minor, had resulted from this fragmented structure. There was nothing to suggest that further fragmentation, by the creation of eight bargaining units instead of the existing seven, would in any way engender serious labour relations difficulties. Finally the Board considered whether the organizing had reached such a stage at the Citizen that a tag end unit was necessary. Given the long history of departmental, multi-unit bargaining, and the remaining categories of unorganized employees, the Board was not disposed to find that a tag end unit was appropriate. *The Ottawa Citizen*, [1987] OLRB Rep. Aug. 1098.

Access section not intended to apply only to geographically remote work sites

This case concerned two applications under section 11 of the *Labour Relations Act* for directions allowing the applicant access to the respondent's property for the purpose of attempting to persuade employees to join a union. The respondent in both cases was in the forest products business and operated eight bush camps in Northern Ontario. The respondent argued that an access direction should not be issued unless the work sites involved were remote or isolated and the applicants could demonstrate that there were no other reasonable means of access to employees, or, in the alternative, that the applicants had exhausted such other reasonable means. In addition, it took the position that the Board must be particularly alert to the difficulties involved where access is requested to employees already represented by a bargaining agent, and that the test for access in these circumstances should be more stringent. Stating that section 11 must be read on the context of a legal and labour relations environment where access is crucial to the scheme of collective bargaining, and where expedition is essential if the section is to have any real value, the Board held that an interpretive approach to section 11 which produced protracted litigation was likely to render the provision meaningless. A construction of section 11 in which the Board must examine whether there are other reasonable means of access and/or whether such means have been exhausted is likely to have that affect. The Board went on to state that were it to accept the position argued by the respondent, it would be difficult to avoid hearing evidence and engaging in what amounted to an evaluation of the efficiency and competence of the union's effort to organize. Stating that such a problem would be fraught with difficulties and unlikely to be particularly useful, the Board stated that the respondent's interpretation was likely to produce a great deal of time-consuming and unhelpful evidence and create such delay that the purpose of the section might well be defeated.

The Board went on to deal with the argument that section 11 was intended to apply only to geographically remote work sites. The Board rejected the argument, stating that the syntax in section 11, its purpose and the labour relations environment in which it must be applied, indicated that the only criteria which must be met are those set out in the section itself. The Board refused to import the B.C. Board limitation that only resident employees which do not have the same opportunity for exposure to the union as non-resident employees should be subject to an access order.

The Board also dealt with the argument that the criteria for access orders should be more stringent where employees are already represented. The Board held that the argument implied that freedom to choose a particular union was of less value under the *Labour Relations Act* than the right to join a union at all. The Board stated that it did not find this proposition supportable. In

so holding the Board cited the statement in *Domtar Inc.*, [1987] OLRB Rep. Apr. 485, that “there is nothing on the face of section 11 which suggests that it should not apply for ‘raids’, in which one union is seeking to displace another”.

The Board concluded that the only criteria that an applicant has to meet are those set out in the Act, that is that employees must reside on property owned by or to which access is controlled by the employer, an interpretation which the Board found consistent with both the wording and purpose of the provision. However, the Board rejected the argument that access orders are automatically and inevitably forthcoming once those criteria are met. The section is not mandatory and the Board retains the discretion to deal with the unusual case where access might be inappropriate. *Great Lakes Forest Products Ltd.*, [1987] OLRB Rep. Sept. 1136.

Union requesting copy of the mailing list supplied by the employer to the Board for occasional teacher pre-hearing vote

The Board directed that a pre-hearing representation vote be conducted and that the Board’s notice of the vote be given by mail to the persons whom the parties had identified as eligible voters. In order to facilitate the Board giving notice in that manner, it was further directed that the respondent supply the Board with mailing labels containing the names and addresses known to the respondent of all the persons on the voters list. In the *Board of Education for the City of York*, [1985] OLRB Rep. May 767, the Board addressed the question of whether an applicant for certification with respect to a unit of occasional teachers should have access to the information supplied to the Board. The Board held in *City of York Board of Education, supra*, that in occasional teacher cases, all interested parties will have access to mailing lists supplied to the Board by respondents. That rule applies to each such case unless the Board specifically directs otherwise. Any requests that the Board specifically direct the applicant *not* be given access to the mailing list must be raised at the meeting with the Labour Relations Officer held in connection with the application in question. As no such request was made at the meeting in either of these applications, the general rule applied to each of them. The Board added that when a similar request is made in any other occasional teacher application in which mailing lists have been supplied to the Board, the request may be honoured by the Registrar without reference to the Board unless the Board has otherwise expressly directed with respect to that particular application. *The Lakehead District Roman Catholic Separate School Board*, [1987] OLRB Rep. Sept. 1154.

Compensation rather than reinstatement appropriate remedy for unlawfully laid-off employees

The president of the respondent company in this case had removed certain licenses from a particular fishing boat, denied the employees working on that boat an opportunity to fish under a third license, laid-off the grievors at the height of the fishing season, and failed to pay the captain his bonus. The Board held that these actions constituted violations of sections 79(2), 66, and 70 of the Act. The Board in refusing to order the company to resume its fishery operations and reinstate the grievors, cited with approval *Academy of Medicine*, [1977] OLRB Rep. Dec. 783, which stated that “a mandatory order compelling an employer to operate a service which it does not wish to operate, albeit for a prohibited reason, would give rise to obvious difficulties of enforcement—difficulties which, in the long run, could only serve to weaken the efficacy of the Board’s remedial orders”. Additional considerations were the fact that the company had been unprofitable since its inception and would have to go even further into debt in order to obtain “start up” funds. The boat concerned had been put up for sale and might be sold by the time the decision issued. Moreover the company did not own any fishing licenses and may not have been able to “rent” any with unused quotas with respect to the 1987 fishing season at that point in time, with most of the 1987 fishing season past. Having regard to all these circumstances as well as to the practical considerations described in the *Academy of Medicine* case, the Board concluded that an

order directing the company to reinstate the grievors would be inappropriate. A compensation order, on the other hand, was clearly warranted. However, since the evidence was far from certain that the boat would have fished during the 1987 fishing season, compensation was limited to the 1986 fishing season. The Board further found that the president of the corporate respondent had personally contravened sections 66 and 70 of the Act. Under those circumstances, it was appropriate to make an order against both the company and the president personally. *Peralta Foods*, [1987] OLRB Rep. Sept. 1162.

Union entitled to names, addresses, telephone number and hourly rates of employees in bargaining unit

The trade union applied under section 40a of the Act for a direction that a first collective agreement between it and the respondent employer be settled by arbitration. The union had earlier been certified under section 8 and two discharged employees had been ordered reinstated. During negotiations the employer refused to provide the union, when requested, with the names, addresses, telephone numbers and hourly rates of the employees in the unit, refused a union security clause, and failed to communicate properly with its representative at the bargaining table.

The Board held that the process of collective bargaining between the parties had been unsuccessful for the reasons set out in subparagraphs (a), (b) and (c) of subsection 40a(2) and, accordingly, directed the settlement of their first collective agreement by arbitration. The Board stated that information about how bargaining unit employees can be contacted is information to which the union is *prima facie* entitled. Refusal to provide the information amounted to a failure to make reasonable efforts to conclude a collective agreement. As well, the employer's approach to the union's proposals about union security reflected either adoption by the respondent of uncompromising bargaining positions without reasonable justification or failure of the employer to make reasonable or expeditious efforts to conclude a collective agreement. The employer had resisted a union security clause for more than 15 months with no plausible explanation for its position. Finally, the failure of communication between the respondent's representatives at the bargaining table and the decision-maker who was not at the table constituted a failure to make reasonable efforts to conclude a collective agreement. *Co-Fo Concrete Forming Construction Limited*, [1987] OLRB Rep. Oct. 1213.

Party not allowed to repudiate settlement because no legal counsel present

This was an unfair labour practice complaint in which the complainant alleged that she had been dealt with by the respondents contrary to the provisions of sections 68, 70, and 80 of the Act. The settlement efforts of a labour relations officer resulted in the signing of minutes of settlement by the complainant and the union local. Among other provisions, the union agreed to pay the complainant the sum of \$2500.00. In return the complainant was required to withdraw her unfair labour practice complaint and to agree not to take or initiate any further actions. The complainant cashed her cheque from the union but later refused to withdraw her complaint. The complainant argued that she was not bound by the written settlement because she was not represented by counsel at that time, and because the counsel whom she subsequently retained was of the opinion that the consequences of the respondent trade union's contravention of section 68 of the Act were not adequately reflected in the amount of the settlement. In finding the minutes of settlement to be binding, the Board noted that section 10 of the *Statutory Powers Procedure Act* permits but does not require representation by counsel. The Board also referred to section 89(7) of the *Labour Relations Act* which states that where the matter complained of in a section 89 complaint has been settled, the settlement is binding on the parties to the settlement document. The Board pointed out that the orderly resolution of its proceedings and the efficacy of the settlement process would be gravely prejudiced if, having signed minutes of settlement, a party could afterwards repudiate the

settlement because it fell short of what a legal adviser subsequently retained by that party felt to be achievable through the complaint. For these reasons, the complaint was withdrawn by the Board in accordance with the provisions of the minutes of settlement. *The Lambton County Board of Education*, [1987] OLRB Rep. Oct. 1277.

Non-party union may not intervene in section 124 proceeding where underlying cause of grievance is a work assignment dispute

In this application, the issue was whether the Board should decide in a proceeding under section 124, the correctness of a work assignment to members of a trade union other than the trade union which is one of the parties to the grievance, when it is alleged the assignment has been made pursuant to a collective agreement other than the one under which the grievance arose. The Board dealt as well with the related question of whether the other trade union should be made a party to the referral for the limited purpose of deciding the correctness of the assignment.

Copper Cliff, the employer, was bound to the provincial agreements for both the Millwrights and the Ironworkers. The Millwrights grieved under its collective agreement because the employer had referred work to the Ironworkers which the Millwrights asserted jurisdiction over pursuant to its collective agreement. Both agreements contained a term which make the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry ("the Plan") the tribunal for resolving work assignment disputes. However, the Millwrights and the Ironworkers both submitted that the Board should decide whether the work should have been assigned under the Millwrights agreement or the Ironworkers agreement in the section 124 proceeding. They relied on the unreported Board decision in *Lackie Industrial Contractors Limited*, issued August 26, 1985. On similar facts, the Board in that case allowed the non-grieving union to intervene for the limited purpose of arguing its claim that the section 124 grievance was rooted in a work assignment dispute. Counsel for both unions viewed the decision as saying that in the event that a work assignment dispute is not adjudicated either by the Board under section 91 of the Act or by another tribunal, the Board would hear and decide in a section 124 proceeding whether the union whose members were assigned the work had a valid claim to the work under its collective agreement. While Copper Cliff had made an application to the Plan, solicitors for the Millwrights later advised the Board that the dispute would not be adjudicated because the work in question had been completed. They further submitted that the only forum remaining for seeking adjudication of the issues raised by the grievance was the Board.

However, the Board was not satisfied on several grounds that it should engage into any inquiry under the section 124 proceeding which would require that the Ironworkers be made a party to the proceeding. This would be the case even if the Board had the consent of the employer, the Millwrights, and the Ironworkers. First, even if *Lackie* did contemplate the intervention of the non-grieving union, the Board was not convinced that this approach would resolve either the grievance or the work assignment dispute. If the Ironworkers agreement did contain language requiring the employer to assign work to members of the Ironworkers, that would not be a complete defence to the Millwrights grievance because this would not preclude the possibility that the employer had the same obligation with respect to members of the Millwrights under the Millwrights agreement.

The Board then turned to the second ground for refusal. As the Millwrights and Ironworkers both had terms in their provincial agreements which made the Plan the tribunal for resolving work assignments instead of the Board under section 91, section 91(14) protects that arrangement from incursion by the Board under section 91. The parties, having created the circumstances which may have frustrated having their work assignment dispute adjudicated by either the Plan, the tribunal selected in their collective agreements, or under section 91 of the Act, asked the Board to accom-

modate them by adapting a procedure intended to deal with disputes between two parties of opposing interests under a collective agreement. The adaptation would require making a party to those same proceedings a third party who is a stranger to the agreement in question and who would usually be allied in interest with one of the parties to the grievance. The Board found no reason to compromise another proceeding under the Act in order to alleviate a problem which the parties had created for themselves.

The third ground for declining to use the section 124 proceeding for the purpose of adjudicating the work assignment dispute was that the Board would be unnecessarily and unreasonably encumbering the proceeding with parties who were strangers to the collective agreement under which the arbitration was taking place. Furthermore, the rules of natural justice would require that the Board serve notice of the proceeding on the parties to the provincial Ironworkers agreement. There would be potential for as many as three parties who were strangers to the collective agreement under which the proceeding arose being made parties to it.

The Board's final ground for declining to adjudicate the work assignment dispute was that it was possible for a respondent to a section 124 proceeding to obtain a similar result without adding parties who are strangers to the collective agreement. Nothing prevented a party to a collective agreement from adducing evidence of other bargaining relationships.

The Board did not make the Ironworkers a party to the section 124 proceeding. *Copper Cliff Mechanical Contractors Ltd.*, [1987] OLRB Rep. Nov. 1357.

Owner-operators of taxis eligible for collective bargaining but placed in separate dependent contractor unit

In this application for certification, the union asserted that taxi "owner-operators" working "under the banner" of Hamilton Yellow Cab Company Limited were either employees or dependent contractors of Yellow. Yellow asserted that the owner-operators were independent contractors. The union further argued that Yellow and a number of other named respondents should all be declared to be related employers pursuant to s.1(4) of the Act. It was alleged that the respondents were totally integrated with, and substantially controlled by, Yellow.

After reviewing the relationship between Yellow and the owner-operators, the Board concluded that Yellow monitored, evaluated, and closely regulated the manner in which drivers/operators work, and initiated disciplinary or corrective measures which resemble those that would be applied to employees. Such authority was exercised on a regular and quite specific basis. The alleged "independence" of the owner-operators was largely illusory; they were fully integrated into the Yellow system and subject to its direct control. The Board found that the owner-operators could be properly characterized as dependent contractors of Yellow and thus "employees" for statutory purposes who are eligible for collective bargaining.

However, the Board held that separate bargaining units should be created for the dependent contractors and the helper-drivers. Helper-drivers are those individuals who may drive an owner-operator's cab during the owner's off hours. Section 6(5) of the Act states that dependent contractors may be included in a bargaining unit with other employees if the Board is satisfied with a majority of such dependent contractors wish to be included in the bargaining unit. The section gives the Board a discretion to fashion a "mixed unit", and it was held that the structure of section 6 requires "wishes" to be expressed in some positive way—not by silence, negative implication, or non-involvement. In this case, there was nothing on the face of the documentary or other evidence to suggest that the dependent contractors had expressed a wish to be included in a mixed bargaining unit with other employees. There was also some evidence that the fill-in drivers may

have had a different community of collective bargaining interests from the full-time owner-operators.

The Board went on to consider whether the named respondents were “related employers”. On the basis of evidence presented at the hearing, it was held that Yellow and one of the respondents, Transportation Unlimited Inc., were related employers. However, there was virtually no evidence with respect to the other named respondents and the Board found no reason to include them in a related employer declaration. *Hamilton Yellow Cab Company Limited*, [1987] OLRB Rep. Nov. 1373.

First contract arbitration not directed as employer had reasonable justification for its position

This was an application to the Board under section 40a of the Act for a direction that a first contract be settled by arbitration. The applicant Federation argued that by not agreeing to meet more frequently, and by not providing its negotiation team with a proper mandate to negotiate, the respondent failed to make reasonable or expeditious efforts to conclude a collective agreement. The applicant also contended that the respondent adopted, without reasonable justification, an uncompromising bargaining position in respect of management rights, seniority, layoffs and related issues.

The Board reviewed in detail the series of dealings between the parties which culminated in the bringing of this application. After finding the process of collective bargaining to have been unsuccessful, the Board went on to consider whether or not that lack of success had been caused by one or more of the conditions or circumstances listed in subsections (a) to (d) of section 40a(2). The applicant confined its case to subsections (b) and (c) of that section. The Board held that section 40a(2)(c) did not provide a basis for a first contract arbitration direction in this instance. The Board was satisfied on the totality of the evidence that the original difficulties in scheduling bargaining sessions improved as the pace of bargaining accelerated. It was also held that the College in fact granted its negotiation team an adequate mandate to negotiate. Having decided that section 40a(2)(c) failed to provide a basis for a first contract direction, the Board turned to examine section 40a(2)(b). The applicant referred to the decision of *Formula Plastics*, [1987] OLRB Rep. May 702 when arguing that the respondent had adopted, without reasonable justification, an uncompromising bargaining position with respect to management rights, seniority, layoffs and related issues. The Board held that for the purposes of its decision, it was necessary to conclusively determine whether or not the respondent had adopted an uncompromising position with respect to any or all of these matters as it was satisfied that the respondent had reasonable justification for its bargaining position regarding each. The application was therefore dismissed. *Alma College*, [1987] OLRB Rep. Dec. 1453.

Representation vote ordered as a result of an application by one bargaining unit member on behalf of three bargaining units

This case involved an application for termination of bargaining rights made pursuant to section 57 of the Act. The respondent union raised two arguments as to why the Board should refuse to consider the applicant’s petition. The union argued that the application should be rejected because the anti-union petition circulated amongst the unit members identified the union in general terms only and failed to specifically outline to which of the two locals and to which of the three bargaining units each signatory belonged. The Board rejected this argument as the evidence showed the majority of the employees of all three units to want to be rid of the union in any of its local manifestations.

The union went on to argue that the individual employee applicant, as a member of but one bargaining unit, could not be an “applicant” seeking termination of bargaining rights in respect of the other two bargaining units. A review of the Board’s jurisprudence revealed there to be situations in which an employee was forbidden from making an application to terminate the bargaining rights of a unit of which the applicant was not a member. However, these cases were distinguished on the grounds that not one involved the documentary or other evidence before the Board in this instance. A majority of the employees in each unit wished to terminate the respondent’s bargaining rights and designated one employee applicant to take such steps as were necessary to accomplish that objective. The applicant submitted an application along with the anti-union petition on his own behalf as well as on behalf of the employees of the other bargaining units. The Board ordered a representation vote. *Huntsville IGA*, [1987] OLRB Rep. Dec. 1517.

Board declining to order pre-hearing representation vote

This case involved an application for certification in which the applicant requested that a pre-hearing representation vote be conducted. The applicant had not previously been found to be a trade union within the meaning of clause 1(1)(p) of the Act. The respondent and objectors argued that it was not a trade union. One of the uncommon characteristics of this application was that the applicant had dealt and continued to deal with the employer on its members’ behalf. Those dealings resulted in certain “arrangements” or “agreements”. The employer took the position that members of its management had participated in the applicant’s affairs, and that the applicant therefore could not be certified, even if it was a trade union, because section 13 of the Act prohibits certification of a trade union which has received employer support.

The parties opposed to a pre-hearing representation vote argued that an objective decision could not be taken by the employees with regard to the application by the applicant to be the certified bargaining agent until it was known who was to be included in the bargaining unit. As a sizeable block of employees were being challenged as to whether they should be included or excluded, the perception of bargaining strength changed dramatically. They argued that where the challenges form such a substantial portion of the potential bargaining unit, voters must be made aware of the scope of the unit before being required to vote. Counsel for the employer also argued that the Board ought not to order a pre-hearing vote in this instance because of the inordinate amount of time, effort and expense required to conduct it.

The Board held that a pre-hearing vote would not be conducted in this application. The consideration which ultimately led to this conclusion stemmed from the existence of the “agreement” between the applicant and employer as well as the applicant’s position that this agreement was a collective agreement. A prime factor causing the Board to exercise its discretion to order a vote prior to a hearing is the concern that delay in the applicant being able to exercise representational rights on behalf of the employees will cause disinterest in and loss of support for an applicant trade union. Under the then current relationship between the employer and applicant, the employer was prepared to permit the applicant to continue to exercise its representational role. The Board characterized a crucial question at issue as “if the agreement is not a collective agreement, is there any likelihood that it does not constitute employer support within the meaning of section 13 of the Act?” Not one of the parties argued with any vigour that the agreement might constitute neither a collective agreement nor employer support.

In summary, the combined effect of the applicant’s position that it already had bargaining rights for the employees in question, the lack of support for or identification of circumstances in which a vote would be of any benefit in resolving the underlying issues and the very high cost of conducting such a vote led the Board to conclude that a pre-hearing vote would not be conducted in this application. *Ontario Hydro*, [1987] OLRB Rep. Dec. 1589.

Youth services officer not allowed to refuse work which he believed would put co-workers in dangerous situation

The complainant, who was a youth services officer at a secured custody facility, alleged that he had been dealt with by the respondent contrary to section 24(1) of the *Occupational Health and Safety Act*. He had been directed during his shift by his supervisor to report to work at another location at the facility. He refused because he thought he would be putting his co-workers in danger by leaving the detention unit short-staffed. Rather than leave, he elected to complete his shift and later received letters of reprimand.

The Board noted that section 24(1) of the Act prohibits an employer from responding in the ways detailed in subsections (a) to (d) because a worker has acted in compliance with the Act or the regulations. When determining whether a worker has acted in compliance, it is not sufficient that a worker believes in good faith or reasonably believes he is acting in compliance. The Board must be satisfied that a worker has, in fact, complied with the Act or the regulations and that such compliance prompted a prohibited response. Whether a worker has complied with the Act or the regulations depends on an interpretation of the relevant provisions relied upon and the facts in each case. Section 24 also prohibits an employer or a person acting on behalf of an employer from responding in the ways detailed in subsections (a) to (d) because the worker has sought enforcement of the Act or regulations. The Board was satisfied that the employer did not act towards the complainant as it did because the complainant sought such enforcement or because he complied with section 17(1)(d). Citing *Baltimore Aircoil of Canada*, [1982] OLRB Rep. March 327 the Board held that the only right in the *Occupational Health and Safety Act* to refuse work is contained in section 23 of the Act. Section 23(1)(c) specifically provides that persons who work at such institutions do not have the right to refuse work which might endanger their health and safety or that of their fellow workers. A worker cannot refuse work on the basis that some other provision of the Act creates a right to disobey the employer. Section 17(2)(b) places an obligation on a worker not to use or operate equipment, etc., and not to work in a manner that may endanger himself or any other worker insofar as a worker's conduct in these respects is entirely within his or her *discretion*. The section does not entitle a worker to refuse an instruction. In this case the complainant's refusal to comply with the instructions of his employer amounted to insubordination.

The Board declined to exercise its discretion to substitute a different penalty under section 24(7). Although the complainant was acting in good faith, insubordination is considered to be misconduct which warrants a significant disciplinary response. The employer's response was seen as "mild" and as "not inappropriate". *Ministry of Community and Social Services*, [1988] OLRB Rep. Jan. 50.

President and Vice-President of company personally liable for breach of Act

The complainant union alleged that the corporate respondent and two individual respondents, the corporate president and vice-president, had each violated sections 50, 64, 66 and 70 of the Act. The challenge was made in two respects. First, a series of conversations between the individual respondents and the union took place in an effort to settle upon compensation due to the grievors, as ordered previously by the Board. This was discussed along with proposals for a collective agreement. The respondents stated that if compensation was made over a certain amount, they would have to close shop or go bankrupt. Secondly, the union contended that the respondents repudiated the collective agreement in that they refused to deduct union dues and remit them to the union.

With respect to the first allegation, the Board was satisfied that the corporate respondent had breached the Act. It had demonstrated a constant and continuing unwillingness to recognize or deal with the union as bargaining agent for employees in the unit. Further, the wording of sections 64 and 66 of the Act gives the Board jurisdiction to find that an individual has breached the sections where it is so pleaded and is borne out by the facts. Whether the Board will find individuals to have breached the Act does not depend on special or exceptional circumstances. Rather, it depends only on whether the persons are alleged to have breached a particular section of the Act, and on whether the evidence establishes the breach of that section. The Board retains a discretion over the appropriate remedy to be directed against an individual. In this instance, both individuals were found to be personally liable for breach of the Act. However, no remedy was issued against any of the respondents as the complaint was not brought in an expeditious fashion. However, the corporate and individual respondents were found to have breached the Act by refusing to deduct and remit union dues. The Board ordered a further hearing to be held to determine the appropriate remedial relief. *Nepean Roof Truss Limited*, [1988] OLRB Rep. Jan. 61.

Deficient Form 9 cause for dismissal of certification application

In this certification application, the intervener C.A.W. argued that the applicant ought not to be found a "trade union". Allegations were made with respect to improprieties regarding membership evidence. It was also alleged that management involvement in the formation and operation of the union resulted in a breach of sections 13, 64, 66 and 70 of the Act. The employees at Pebra were attempting to organize. A meeting was called to determine whether they would form an independent employees association, join the C.A.W. or neither. The leadership group of four employees endorsed the employee's association option. Membership cards were handed out to those interested. Many were returned along with one dollar. Subsequently, an application for certification was filed. However, on the suggestion of counsel, the applicants withdrew this application as there were allegations levied by the C.A.W. that the membership cards were ambiguous and misleading. Another meeting of employees was called and new membership cards were issued. All employees were told that if they had already signed a card and paid a dollar, they need not pay the dollar again. The returned cards were given to two of the association officials. They would then sign the cards as collector, without regard to whether the person signing as collector had actually collected the dollar from the signing employee for their first card. A second application for certification was submitted. The President of the employee association signed the accompanying Form 9. In testimony at the certification hearing he admitted that when he signed the Form 9, he was unaware of whether the person signing as collector had actually collected the dollar with respect to the applicable card. The C.A.W. intervened, stating that no dollars were paid or exchanged upon the signing of these applications for membership. The matter was adjourned for further particulars and the applicant submitted an amended Form 9, which outlined exceptions, in an effort to explain to the Board that the collector who signed the cards was not necessarily the individual who had collected the dollar from that employee.

At issue was the adequacy of membership evidence and the reliability of the Form 9. The Board outlined four matters which appear to be required in order for a declarant to properly sign a Form 9. First, the basis of the declarant's knowledge must be personal experience or reasonable inquiries that the declarant has made. Second, the declarant must be able to declare that the collector named on the membership card actually received the payment. Third, where exceptions exist to the declaration with respect to the second aspect, the declarant must note those exceptions in the particular instance. Fourth, the declaration must not contain any statements that the declarant knew or ought to have known were material misrepresentations. The Board noted that with respect to the Form 9 before it, specific disclosures were not made. Also, the declarant failed

to make reasonable inquiries in an effort to inform himself of the circumstances of the collection of all cards. The Form 9 also materially misrepresents what had occurred. Schedule A states that “the collectors were present together when all payments were received”. This was not the case.

The Board rejected the Form 9’s as improper and unreliable. As the Form 9’s were rejected, there was no membership evidence before the Board and accordingly the application was dismissed. A Form 9 Declaration is critical to the integrity and fairness of the certification process. Where the Board is asked to certify trade unions on the basis of hearsay membership evidence, without disclosing to the employer such evidence or allowing cross-examination on it, a high standard of integrity and reliability must be maintained. In light of the dismissal of the application, it became unnecessary to deal with the issues of “trade union” status and management support. *Pebrar Peterborough Inc.*, [1988] OLRB Rep. Jan. 76.

Labour relations of duty free shop falling within provincial jurisdiction

In this certification application the Board considered whether it had constitutional jurisdiction over the labour relations of the respondent employer. The employer operated a duty free shop located on a bridge border crossing. Two grounds were forwarded by the respondent in arguing that its labour relations were under federal jurisdiction: first, the respondent itself was engaged in a federal business, work or undertaking, in that it was itself engaged in export, customs and excise, or taxing; and secondly, in the alternative, the respondent was integrally connected or related to a federal work or undertaking, that of customs excise.

The Board relied on the decision of *Toronto Auto Parks (Airport) Limited*, [1978] OLRB Rep. July 682, in holding that the respondent falls within provincial jurisdiction for the purpose of labour relations matters. Notwithstanding the pervasive federal regulation and the fact that the business of the employer only existed because of federal approval, the regulation or approval was seen as not touching in any meaningful sense upon labour relations matters. A business is not a federal business, work or undertaking if it is in essence a retail store in the Province of Ontario, whether or not the store is located on federal land and operates out of a federally owned building. Similarly, the Board did not find that the existence and operation of the duty-free shop was so integrally connected to the federal undertaking of operating a border crossing that it ought to be found as being within federal jurisdiction. Subsequent to the hearing, a representation vote was held in which not more than fifty percent of the ballots cast were cast in favour of the applicant. The application was dismissed. *Blue Water Bridge Duty Free Shop Inc.*, [1988] OLRB Rep. Feb. 109.

Category of Ontario Hydro employees falling within federal jurisdiction

This was an application by the Society of Ontario Hydro Professionals and Administrative Employees for certification as exclusive bargaining agent for a unit of administrative, scientific and professional engineering employees of Ontario Hydro. This decision addressed the question of whether some of these employees fell within federal jurisdiction for labour relations purposes and were, therefore, beyond the scope of this application. At this stage in the proceedings, the Board only considered whether there was a category of employees of Ontario Hydro, definable by reference to the words of section 17 of the *Atomic Energy Control Act*, whom the Board would have no jurisdiction to include in a unit in this application, without attempting to identify all of the employees who might fall within any such category.

The basis for assertion of federal jurisdiction over labour relations is the exercise, in section 17 of the *Atomic Energy Control Act*, of the declaratory power given to Parliament by section 92(10)(c) of the *Constitution Act*. By virtue of section 91(29) of the *Constitution Act*, Parliament

has the same jurisdiction over works falling within the description in section 92(10)(c) as if that description appeared as one of the classes of subjects expressly enumerated in section 91. The Board held that section 17 of the *Atomic Energy Control Act* was valid legislation; there need not be an objectively ascertainable national interest in the object of Parliament's exercise of the declaratory power under section 92(10)(c). This federal jurisdiction over the labour relations of individuals employed on or in connection with these declared works is not excluded by the fact that the declared works form part of "facilities in the province for the generation and production of electrical energy" within the meaning of subsection 92A(1) of the *Constitution Act*, nor by the fact that Ontario Hydro is owned by the provincial Crown.

It was apparent from the evidence that there were some persons who might otherwise fall within the unit affected by this application whose regular duties included the operation or supervision of the operation of CANDU reactors. Those persons, at least, fell within federal jurisdiction for labour relations purposes. The Board would not attempt to identify these persons without affording the parties a further opportunity to lead evidence and make argument addressed to these matters. *Ontario Hydro*, [1988] OLRB Rep. Feb. 187.

Broker-drivers, lessee drivers and drivers of limousines found to be dependent contractors

These were applications for certification of drivers of various airline limousine services and a livery service. This decision dealt primarily with whether "brokers who do not drive", "brokers who drive", "lessees who drive", and "drivers" were "independent contractors", "employees" or alternatively "dependent contractors".

The Board reviewed the history and development of the "dependent contractor" characterization. In considering the "working drivers" (i.e. broker-driver, lessee-driver, and driver) the Board concluded that these individuals supply primarily their labour in the service of the company's customers at times, places, and on terms specified by the companies or Transport Canada. They were, for practical purposes, totally dependent upon the company for their source of work and income. The company monitored behaviour on the job, and could effectively terminate that relationship at will. On the other hand, the Board found little evidence of entrepreneurial activity such as self-promotion, product differentiation, price competition or the organization of one's business to take advantage of limited liability or the tax laws. The Board also concluded that the relationship between a broker-driver or lessee-driver and someone who merely drives for the former (a "helper") on the evidence more resembled a partnership. The Board was satisfied that all of the working drivers were properly regarded as dependent contractors of their respective companies, and that those individuals formed an appropriate bargaining unit in each case. The Board found that brokers who did not drive, and who were not subject to the same elaborate network of control as the working drivers and concluded that these individuals were not dependent contractors within the meaning of section 1(1)(h). The Board was unable to conclude that livery drivers were dependent contractors who should be included in a bargaining unit with the working airline limousine drivers. The bargaining unit description was therefore augmented by a clarity note indicating that the drivers' unit for each respondent company would not encompass drivers when working in the livery operation. However, such livery operation may be, in itself, a separate bargaining unit. *Airline Limousine*, [1988] OLRB Rep. Mar. 225.

Interference with access to internal mail system constituting breach of section 64

The Canadian Union of Public Employees (CUPE) went to the Board with an allegation that the University of Toronto had violated section 64 of the Act in that the union was denied use of the University's internal mail service for the purpose of disseminating pro-union materials. Earlier, materials were sent to employees by the University of Toronto Staff Association (UTSA) on behalf

of CUPE. The University alleged that to permit CUPE to use the service for such a purpose would constitute “other support” for a trade union within the meaning of sections 64 and 13 of the Act. The UTSA had a history of using the internal mailing system to distribute a regular newsletter, notices, surveys and other material for its members. It also used the system to solicit membership from non-members amongst its constituency. The University had never applied censorship to materials sent via the internal system although maintained that censorship may be imposed in the instance of materials such as “hate literature”.

The Board held that to allow CUPE access to the internal mail system was akin to requiring the University of Toronto to treat UTSA as it treated all other organizations on campus. Continued usage was not be considered as support for pro-union materials. While the University might have had an obligation to prevent the circulation of illegal matter through its internal mail service, union organizing material could be distributed as it was not in itself illegal. The restriction by the University of Toronto of UTSA’s enjoyment of an existing practice constituted an interference with the rights of CUPE under section 64 of the Act. *University of Toronto*, [1988] OLRB Rep. Mar. 325.

VI COURT ACTIVITY

During the year under review, the Courts dealt with seven applications for judicial review, and dismissed all seven.

In two of the seven applications for judicial review which were dismissed by the Divisional Court, the applicants sought leave to appeal to the Court of Appeal. One of these leave applications was dismissed and one was granted, and that appeal is pending.

One application for judicial review was not perfected within the statutory time limit, and an application to extend the time to perfect was dismissed.

Seven applications for judicial review were withdrawn, discontinued or abandoned by the applicants in the year under review.

An application to stay Board proceedings pending a judicial review application was dismissed.

In one application which was dismissed last year, the applicant this year sought leave to appeal, which was denied. In an application for which leave to appeal the dismissal of a judicial review application was granted last year, the appeal was heard and dismissed in this fiscal year. An application brought by the Board for leave to appeal a Court of Appeal decision to the Supreme Court of Canada was dismissed.

Twelve other applications for judicial review are pending as at year-end. Two appeals, one to the Court of Appeal and one to the Supreme Court of Canada are also pending.

The following are brief summaries of matters involving the Labour Relations Board which went to Court during the fiscal year.

Marilyn Bolton

**Supreme Court of Ontario, Divisional Court,
October 29, 1987; Unreported**

The complainant had alleged that both her union and her employer had committed various unfair labour practices. On a motion by the respondents, the Board dismissed all but one allegation as disclosing no *prima facie* case. The Board proceeded to hear the allegation that the union had breached its statutory duty of fair representation with respect to the complainant's grievance of her dismissal. The Board concluded that the union had not violated the Act, and dismissed the complaint.

The complainant sought judicial review of the Board's decision naming the Ministry of Labour and some of its departments as respondents in addition to the employer, the union and the Board. The application sought, among other remedies, clarification as to which government agency or board had jurisdiction over a variety of employment situations.

The complainant brought a motion to compel the Board to prepare a record and file certain documentation with the Court. Since the Record and documentation had been filed prior to the hearing date of November 10, 1986, the Divisional Court dismissed the motion.

The Divisional Court heard and dismissed the application for judicial review on October 29, 1987. The Court found no grounds in the application for interfering with the Board's decision.

Brantwood Manor Nursing Home Ltd.
Ontario Court of Appeal,
January 22, 1988; Unreported

The union had complained of Brantwood Manor's laying off union employees and contracting its work out to two other companies, and had applied for declarations that Brantwood and each of the other two companies constituted one employer, bound by Brantwood's collective agreement with the union.

The Board found Brantwood Manor to have failed to bargain in good faith and interfered with the union and the rights of employees by refusing to recognize or bargain with the union's bargaining committee as it was composed. The Board also issued the two declarations of one employer, and in each case found violations of the collective agreement in assigning work to employees outside the bargaining unit and failing to abide by the union security and recognition agreements. The Board ordered reinstatement and compensation for the breaches of the collective agreement.

Brantwood sought judicial review of the Board's decision on the grounds that the Board had erred in interpreting and applying section 1(4) and exceeded its jurisdiction in finding the companies to be in breach of the collective agreement when there was no allegation of such breach before it. Brantwood also sought a stay of the Board's decision, which was granted by the Court in March 1986.

The application for judicial review was dismissed by the Divisional Court in its decision dated June 3, 1986. The Court found the Board's interpretation of section 1(4) to be reasonable and held that the common law right to contract out had not been overridden, as there was no true contracting out given Brantwood's degree of control over the other two companies. The Court also rejected an argument made by one of the companies, Med+Experts Inc., that it had not considered itself at risk of being found in breach of the collective agreement, noting that the issue of non-union hiring was before the Board in the context of unfair labour practices, and that the other companies should have known from the nature of the proceedings that any consequences to Brantwood might extend to them. The Court concluded that the other company had an adequate opportunity to address the issue of breach of the collective agreement, and was therefore not denied natural justice.

Brantwood Manor and Med+Experts sought leave to appeal the Divisional Court decision.

A motion to stay the Board's proceedings was settled between the parties, so that the Board consented to a Court order dated August 21, 1986 effectively staying the Board decision.

On September 15, 1986, leave to appeal was granted by the Court of Appeal.

On January 21 and 22, 1988 the Court of Appeal heard and dismissed Brantwood's appeal of the Divisional Court's dismissal of its judicial review application.

Cadillac Fairview Corporation Limited
Supreme Court of Ontario, Divisional Court,
November 30, 1987; 88 CLLC ¶72,016; 7 A.C.W.S. (3d) 136
Ontario Court of Appeal,
February 29, 1988; Unreported

The union had complained that Eaton's, and Cadillac Fairview, acting on behalf of its tenant Eaton's, had interfered with the union by denying union organizers access to Cadillac Fairview property just outside the Eaton's store.

The Board noted that Cadillac Fairview's conduct had clearly interfered with the trade union, and the issue was therefore whether Cadillac Fairview was acting on behalf of Eaton's. The Board considered numerous factors including the fact that Eaton's was Cadillac Fairview's prime tenant and Cadillac Fairview had no business justification of its own for its actions, and concluded that Cadillac Fairview was in fact acting on behalf of Eaton's and therefore had violated the *Labour Relations Act*. The Board ordered Cadillac Fairview to allow employees orderly access to union organizers on its property.

Cadillac Fairview sought judicial review of the Board's decision on the grounds that the Board made numerous errors in finding that Cadillac Fairview was "acting on behalf of" Eaton's and exceeded its jurisdiction by awarding a remedy which abrogated Cadillac Fairview's rights under the *Trespass to Property Act*.

In its decision dated November 30, 1987, the Court held that the Board's findings that Cadillac Fairview was acting on behalf of Eaton's and had the requisite intent to commit an unfair labour practice were not patently unreasonable. The Court also rejected Cadillac Fairview's argument that the remedy awarded by the Board was beyond its jurisdiction. The application for judicial review was accordingly dismissed.

Cadillac Fairview sought and obtained on February 29, 1988 leave to appeal the Divisional Court decision to the Court of Appeal.

Gary Hopkins
Supreme Court of Ontario, Divisional Court,
April 6, 1987; Unreported

The complainant had alleged that the union had breached its duty of fair representation with respect to the complainant's grievance of his dismissal. The union and employer requested that the Board not hear the complaint in light of the complainant's delay in filing the complaint with the Board. The Board found that due to the complainant's excessive delay in filing, a fair hearing would be impossible, and the complaint was therefore dismissed without a hearing on the merits.

The complainant brought an application for judicial review on the grounds that the Board denied him natural justice by declining to hear the merits of his complaint and erred in law with respect to the issues of onus and delay. In argument, the complainant alleged that the Board had also violated the fundamental justice provisions of the Charter. The complainant asked the Court to order the Board to proceed to hear the merits of the complaint.

The Divisional Court on April 6, 1987 dismissed the application for judicial review. The Court held that the Board was not required to hear the merits of the complaint before ruling on the preliminary objection, that the Board made no reviewable error and that the Charter did not apply.

The Ombudsman of Ontario
Supreme Court of Canada,
June 25, 1987; Unreported

The Board had refused requests by the Ombudsman for information respecting the merits of Board decisions on the ground that the Ombudsman had authority to investigate only administrative activities of the Board.

The Ombudsman sought a declaration from the Divisional Court that it had jurisdiction to investigate all activities of the Board, including the exercise of its quasi-judicial functions.

The Divisional Court granted the declaration on September 5, 1985, citing the Court of Appeal decision in *Re Ombudsman of Ontario and Health Disciplines Board of Ontario, et al.*, where it was determined that section 15 of the *Ombudsman Act* gave the Ombudsman the authority to investigate the merits of quasi-judicial decisions. The Court noted that the Ombudsman could not overrule Board decisions, but merely expose them to political scrutiny.

The Board sought and obtained in March, 1986 leave to appeal the Divisional Court decision to the Court of Appeal.

On December 17, 1986 the Court of Appeal upheld the Divisional Court decision, confirming that the *Health Disciplines Board* case had decided the issue, and dismissed the appeal with costs against the Board. In response to the Board's arguments that different considerations had to apply in the labour relations context, the Court stated that in the face of the clear wording of the *Ombudsman Act*, only the legislature, and not the Courts, could exempt particular tribunals from investigation of the merits of their decisions. The Court did confirm that Board members and employees would not be obliged to provide information to the Ombudsman if doing so would breach any of the non-disclosure provisions of the *Labour Relations Act*.

The Board applied for leave to appeal the Court of Appeal decision to the Supreme Court of Canada which, in its decision of June 25, 1987, denied the Board leave to appeal.

Ottawa Board of Education
Ontario Court of Appeal,
May 11, 1987; Unreported

This certification application and one respecting the Board of Education for the City of York were dismissed in separate Board decisions, which were then judicially reviewed together. In each case, the issue was whether a group of teachers outside the regular school programme came within the definition of "teacher" set out in the *School Boards and Teachers Collective Negotiations Act* ("Bill 100"), so that by section 2(f) of the *Labour Relations Act* the latter did not apply to them and therefore the applications had to be dismissed.

The Ottawa application involved teachers in the continuing education night school programme. The majority of the Board held that the language of Bill 100 was sufficiently broad to embrace various teaching arrangements, including this one, so that the teachers were excluded from the application of the *Labour Relations Act* and therefore the certification application was dismissed.

The York application involved teachers employed to teach credit courses at the secondary school level to residents of Humewood House, a residence for troubled teenagers. A board of arbitration had found them to be not covered by a collective agreement entered into under Bill 100 and therefore the parties agreed that the teachers were not covered by that legislation. The Board, however, noting that the agreement of the parties and the arbitration decision could not confer

upon it jurisdiction where it had none, considered the issue and held that these teachers came within the Bill 100 definition because they were qualified as teachers and employed to teach. The Board concluded that these employees were excluded from the application of the *Labour Relations Act* and accordingly the application was dismissed.

Each Board of Education sought judicial review of the decision affecting it. They alleged that the Board had erred in law in finding that the teachers came within Bill 100 and were excluded from the *Labour Relations Act*. The York Board set out as an additional ground for review a denial of freedom of association under the Charter, in that the decision had the effect of forcing the teachers to be represented by the Ontario Secondary School Teachers Federation, the union specified in Bill 100.

The two cases were heard together on May 6 to 8, 1986, and the Divisional Court issued its decision on January 27, 1987. The Court noted that the standard of review to be applied, given that the board was not interpreting its constituent statute, was correctness, and the Court held that the Board came to the correct conclusion in each case and therefore both applications for judicial review were dismissed.

Both Ottawa and York brought applications for leave to appeal the Divisional Court decision on the ground that the Court erred in concluding that Bill 100 applied to these two groups of teachers. The York Board abandoned its application by notice dated April 16, 1987. The application of the Ottawa Board for leave to appeal was dismissed by the Court of Appeal on May 11, 1987.

In this application for certification, petitions in opposition to the union were filed.

The Board, finding that the petitioners had failed to prove that the petitions were voluntary, gave no weight to the petitions and, as a result, certified the union on the basis that more than 55% of the employees in the bargaining unit were members.

The employer brought an application for judicial review on the grounds that the Board exceeded its jurisdiction and violated the equality provision (section 15) of the Charter in holding that the petitions were not voluntary in the absence of any evidence.

On December 22, 1987, the Divisional Court dismissed the application for judicial review.

Shaw-Almex Industries Limited
Supreme Court of Ontario, Divisional Court,
September 21, 1987; January 12, 1988; 88 CLLC ¶14,007
Ontario Court of Appeal,
February 22, 1988; Unreported

The union, which at the time of the Board hearing had been on strike for nearly three years, complained that Shaw-Almex, by insisting at the bargaining table that replacement workers would be kept on permanently while the strikers would be recalled only as vacancies arose, was attempting to interfere with employees' rights and with the union, and was bargaining in bad faith.

Shaw-Almex claimed that section 89(5) of the *Labour Relations Act* (the reverse-onus provision) violated section 15 of the Charter, which provides that individuals are equal before the law. When the union contended that a corporation has no status to plead section 15, which protects individuals, a majority composed of the Vice-Chair and the management Board Member found that Shaw-Almex was entitled to make the argument. The Vice-Chair and the labour Board Member went on to find that section 89(5) does not violate section 15 of the Charter and that Shaw-Almex had violated sections 15, 64 and 66 of the *Labour Relations Act*.

A request for reconsideration by Shaw-Almex was dismissed. An argument by Shaw-Almex that the Board had denied it natural justice because the Vice-Chair had discussed the case with the Chair and other Vice-Chair was unsuccessful.

Shaw-Almex sought judicial review of the Board's decision on the grounds that the Board made numerous errors of law, including failing to find section 89(5) in violation of the Charter and wrongly interpreting and applying sections 15, 64 and 66 of the *Labour Relations Act*.

While the first judicial review was still pending, the Board granted the union's request that it be allowed to photocopy documents filed by Shaw-Almex and the Board also declined Shaw-Almex's request that the Board stay the order until Shaw-Almex could seek review thereof in the Courts. Shaw-Almex then sought judicial review of the order and an interim Court order staying the Board's order pending disposition of the application for judicial review. The stay application was dismissed on September 21, 1987 and this judicial review was not pursued further.

With respect to the first application for judicial review, the Divisional Court in its decision dated January 12, 1988 held, contrary to the majority of the Board, that a corporation did not even have status to argue a violation of section 15 of the Charter and therefore the Court did not inquire into the validity of section 89(5). The Court found that the Board's interpretation and application of sections 15, 64 and 66 of the *Labour Relations Act* were not patently unreasonable. The Court also found no violation of natural justice in the Vice-Chair's discussion of the case.

Shaw-Almex sought leave to appeal the Divisional Court decision to the Court of Appeal, which denied leave on February 22, 1988.

City of Thunder Bay,
Regional Municipality of Waterloo
Supreme Court of Ontario, Divisional Court,
May 12, 1987; 59 O.R. (2d) 507

The Ministry of Community and Social Services delegated to municipal employees represented by CUPE the administration of the *Family Benefits Act*, which had been carried out by Crown employees represented by OPSEU.

Waterloo and CUPE sought a declaration pursuant to section 5 of the *Successor Rights (Crown Transfers) Act* that there had been a transfer of an undertaking from the Crown to the municipality. OPSEU and the Crown submitted in response that there had been no such transfer, as the Crown had no statutory authority to have the work performed by other than Crown employees.

The Board held that it did not need to determine whether or not the transfer was legal. It held that there had been a transfer, and that there had been an intermingling of former Crown employees with municipal employees, and that those represented by CUPE far outnumbered those represented by OPSEU. The Board declared that Waterloo was not bound by the collective agreement between OPSEU and the Crown and that CUPE was the bargaining agent for all employees described in its collective agreement with Waterloo, including the six former Crown employees.

In a similar application, CUPE sought a declaration that it represented former Crown employees who became employed by Thunder Bay as a result of the transfer of work to the City. The Board determined that there had been a transfer and intermingling of employees, and declared that the City was not bound by the collective agreement between OPSEU and the Crown and that CUPE was the bargaining agent for the employees of Thunder Bay.

OPSEU sought judicial review of both Board decisions, alleging that the Board erred in failing to decide whether the transfer of work by the Ministry was lawful. OPSEU also challenged the decision of the Ministry to transfer the work.

The two judicial reviews were heard together and dismissed by the Divisional Court on May 12, 1987. The Court concluded that the Minister did have authority to transfer the duties to municipal employees, and declined to review or interfere with the Board's decision.

VII CASELOAD

In fiscal year 1987-88, the Board received a total of 3,583 applications and complaints, an increase of six cases over the intake of 3,577 cases in 1986-87. Of the three major categories of cases that are brought to the Board under the Act, applications for certification of trade unions as bargaining agents increased by 9 percent over last year, contravention of the Act increased by less than one percent and referrals of grievances under construction industry collective agreements remained the same. The total of all other types of cases decreased by 11 percent. (Tables 1 and 2).

In addition to the cases received, 901 were carried over from the previous year, for a total caseload of 4,484 in 1987-88. Of the total caseload, 3,112, or 69 percent, were disposed of during the year; proceedings in 366 were adjourned sine die* (without a fixed date for further action) at the request of the parties; and 1,006 were pending in various stages of processing at March 31, 1988.

The total number of cases processed during the year produced an average workload of 299 cases for the Board's full-time chair and vice-chair, and the total disposition represented an average output of 207 cases.

Labour Relations Officer Activity

In 1987-88, the Board's labour relations officers were assigned a total of 2,230 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 50 percent of the Board's total caseload, and included 460 certification applications, 41 cases concerning the status of individuals as employees under the Act, 801 complaints of alleged contraventions of the Act, 864 grievances under construction industry collective agreements, and 64 complaints under the *Occupational Health and Safety Act*. (Table 3).

The labour relations officers completed activity in 1,570 of the assignments, obtaining settlements in 1,363, or 87 percent. They referred 207 cases to the Board for decisions; proceedings were adjourned sine die in 258 cases; and settlement efforts were continuing in the remaining 402 cases at March 31, 1988.

Labour relations officers were also successful in having hearings waived by the parties in 212, or 71 percent, of 298 certification applications assigned for this purpose.

Representation Votes

In 1987-88, the Board's returning officers conducted a total of 281 representation votes among employees in one or more bargaining units. Of the 281 votes conducted, 232 involved certification applications, and 49 were held in applications for termination of existing bargaining rights. (Table 5).

* The Board regards sine die cases as disposed of, although they are kept on docket for one year.

Of the certification votes, 152 involved a single union on the ballot; 79 involved two unions, and two involved three unions. Of the two-union and three-union votes, 94 percent entailed attempts to replace incumbent bargaining agents.

A total of 21,894 employees were eligible to vote in the 281 elections that were concluded, of whom 15,345, or 70 percent, cast ballots. Of those who participated, 59 percent voted in favour of union representation. In the 232 certification elections, 69 percent of the eligible voters cast ballots, with 63 percent of those who participated voting for union representation. In the 152 elections that involved a single union, 68 percent of the eligible voters cast ballots, of whom 51 percent voted for union representation. In the two-union elections 68 percent of the eligible voters cast ballots, with 79 percent of the participants voting for union representation. In the elections involving three unions, 97 percent of the eligible voters cast ballots for union representation.

In the 49 votes in applications for termination of bargaining rights, 83 percent of the eligible voters cast ballots, with only 30 percent of those who participated voting for the incumbent unions.

Last Offer Votes

In addition to taking votes ordered in its cases, the Board's Registrar was requested by the Minister to conduct votes among employees on employers' last offer for settlement of a collective agreement dispute under section 40(1) of the Act. Although the Board is not responsible for the administration of votes under that section, the Board's Registrar and field staff are used to conduct these votes because of their expertise and experience in conducting representation votes under the Act.

Of the 27 requests dealt with by the Board during the fiscal year, votes were conducted in 19 situations, settlements were reached in 5 cases before a vote was taken, and 3 cases were withdrawn.

In the 19 votes held, employees accepted the employer's offer in 11 cases by 652 votes in favour to 386 against, and rejected the offer in 8 cases by 533 votes against to 251 in favour.

Hearings

The Board held a total of 1,030 hearings and continuation of hearings in 1,415, or 32 percent of the 4,484 cases processed during the fiscal year. This was a decrease of 446 sittings from the number held in 1986-87. One hundred and eighty-seven of the hearings were conducted by vice-chair sitting alone, compared with 78 in 1986-87.

Processing Time

Table 7 provides statistics on the time taken by the Board to process the 3,112 cases disposed of in 1987-88. Information is shown separately for the three major categories of cases handled by the Board—certification applications, complaints of contraventions of the Act, and referrals of grievances under construction industry collective agreements—and for the other categories combined.

A median of 43 days was taken to proceed from filing to disposition for the 3,112 cases that were completed in 1987-88, compared with 50 days in 1986-87. Certification applications were processed in a median of 43 days, compared with 36 in 1986-87; complaints of contravention of the Act took 64 days, compared with 71 in 1986-87; and referrals of construction industry grievances required 15 days, the same as in 1986-87. The median time for the total of all other cases decreased to 71 days from 106 in 1986-87.

Sixty-nine percent of all dispositions were accomplished in 84 days (3 months) or less, compared with 73 percent for certification applications, 58 percent for complaints of contraventions of the Act, 84 percent for referrals of construction industry grievances, and 55 percent for the total of all other types of cases. The number of cases requiring more than 168 days (6 months) to complete decreased to 450 from 790 in 1986-87.

Certification of Bargaining Agents

In 1987-88, the Board received 1,125 applications for certification of trade unions as bargaining agents of employees, an increase of 91 cases over 1986-87. (Tables 1 and 2).

The applications were filed by 87 trade unions, including 21 employee associations. Eighteen of the unions, each with more than 20 applications, accounted for 81 percent of the total filings: Labourers (158 cases), Carpenters (115 cases), Canadian Paper Workers (21 cases), Public Employees (CUPE) (63 cases), Food and Commercial Workers (44 cases), Service Employees International (38 cases), International Operating Engineers (75 cases), Teamsters (33 cases), United Steelworkers (87 cases), Canadian Auto Workers (33 cases), Electrical Workers (IBEW) (26 cases), Ont. Secondary School Teachers (35 cases), Ontario Nurses Association (28 cases), Painters (24 cases), Plumbers (31 cases), Structural Iron Workers (23 cases), Retail Wholesale Employees (23 cases) and Woodworkers (51 cases). In contrast, 62 percent of the unions filed fewer than 5 applications each, with the majority making just one application. These unions together accounted for 6 percent of the total certification filings. (Table 8).

Table 9 gives the industrial distribution of the certification applications received and disposed of during the year. Non-manufacturing industries accounted for 78 percent of the applications received, concentrated in construction (404 cases), health and welfare services (120 cases), accommodation and food services (48 cases), retail trade (37 cases), education and related services (104 cases), wholesale trade (23 cases), and transportation (39 cases). These seven groups comprised 89 percent of the total non-manufacturing applications. Of the 253 applications involving establishments in manufacturing industries, 76 percent were in nine groups: food and beverage (26 cases), metal fabricating (37 cases), wood (28 cases), non-metallic minerals (20 cases), transportation equipment (24 cases), machinery (12 cases), printing and publishing (12 cases), paper (17 cases) and other manufacturing (16 cases).

In addition to the applications received, 273 cases were carried over from last year, making a total certification caseload of 1,398 in 1987-88. Of the total caseload, 1,108 were disposed of, proceedings were adjourned in 18 cases, and 272 cases were pending at March 31, 1988. Of the 1,108 dispositions, certification was granted in 750 cases including 28 in which interim certificates were issued under section 6(2) of the Act, and 4 that were certified under section 8; 183 cases were dismissed; proceedings were terminated in 4 cases; and 171 cases were withdrawn. The certified cases represented 68 percent of the total dispositions. (Table 1).

Of the 937 applications that were either certified, dismissed or terminated, final decisions in 239 cases were based on the results of representation votes. Of the 239 votes conducted, 161 involved a single union on the ballot; 76 were held between two unions; and two involved three unions. Applicants won in 147 of the votes and lost in the other 92. (Table 6).

A total of 19,390 employees were eligible to vote in the 239 elections, of whom 13,544 or 70 percent cast ballots. In the 147 votes that were won and resulted in certification, 9,243 or 65 percent of the 14,280 employees eligible to vote cast ballots, and of these voters 7,021 or 76 percent favoured union representation. In the 92 elections that were lost and resulted in dismissals, 4,301 or 84 percent of the 5,110 eligible employees participated, and of these only 36 percent voted for union representation.

Size and Composition of Bargaining Units: Small units continued to be the predominant pattern of union organizing efforts through the certification process in 1987-88. The average size of the bargaining units in the 750 applications that were certified was 36 employees, the same as in 1986-87. Units in construction certifications averaged 7 employees, compared with 8 in 1986-87; and in non-construction certifications they averaged 52 employees, compared with 44 in 1986-87. Seventy-nine percent of the total certifications involved units of fewer than 40 employees, and 45 percent applied to units of fewer than 10 employees. The total number of employees covered by the 750 certified cases increased to 27,085 from 23,536 in 1986-87. (Table 10).

Of the employees covered by the applications certified, 7,202 or 27 percent, were in bargaining units that comprised full-time employees or in units that excluded employees working 24 hours or less a week. Units composed of employees working 24 hours or less a week accounted for 4,289 employees, found mostly in education and health and welfare services and represented mainly by teachers unions and the Ontario Nurses Association. Full-time and part-time employees were represented in units covering 15,594 employees, including units that did not specifically exclude employees working 24 hours or less a week. (Tables 12 and 13).

Seventy-three percent of the employees, 19,886 were employed in production, service and related occupations; and 694 were in office, clerical and technical occupations, mainly health and welfare services. Professional employees, found mostly in education and health and welfare services, accounted for 4,766 employees; a small number, 433 employees, were in sales classifications; and 1,306 were in units that included employees in two or more classifications. (Tables 14 and 15).

Disposition Time: A median time of 36 calendar days was required to complete the 750 certified cases from receipt to disposition. For non-construction certifications the median time was 43 days, and for construction certifications the median time was 29 days. (Table 11).

Seventy-eight percent of the 750 certified cases were disposed of in 84 days (3 months) or less, 67 percent took 56 days (2 months) or less, 26 percent required 28 days (one month) or less, and 12 percent were processed in 21 days (3 weeks) or less. Sixty-three cases required longer than 168 days (6 months) to process, compared with 80 in 1986-87.

Termination of Bargaining Rights

In 1987-88, the Board received 159 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions. In addition, 41 cases were carried over from 1986-87.

Of the total cases processed, bargaining rights were terminated in 59 cases, 41 cases were dismissed, 30 were withdrawn or settled, 2 cases were adjourned sine die, proceedings were terminated in 3 cases, and 65 cases were pending at March 31, 1988.

Unions lost the right to represent 1,882 employees in the 59 cases in which termination was granted, but retained bargaining rights for 3,758 employees in the 70 cases that were either dismissed or withdrawn.

Of the 100 cases that were either granted or dismissed, dispositions in 46 were based on the results of representation votes. A total of 1,996 employees were eligible to vote in the 46 elections that were held, of whom 1,658 or 83 percent cast ballots. Of those who cast ballots, 517 voted for continued representation by unions and 1,141 voted against. (Table 6).

Declaration of Successor Trade Union

In 1987-88, the Board dealt with 81 applications for declarations under section 62 of the Act, on the bargaining rights of successor trade unions resulting from a merger or transfer of jurisdiction, compared to 12 in 1986-87.

Affirmative declarations were issued by the Board in 45 cases, 8 cases were withdrawn, 1 case was dismissed, proceedings were adjourned sine die in 1 case, and 26 cases were pending at March 31, 1988.

Declaration of Successor or Common Employer

In 1987-88, the Board dealt with 261 applications for declarations under section 63 of the Act, on the bargaining rights of trade unions of a successor employer resulting from a business sale; or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the Board in 17 cases, 107 cases were either settled or withdrawn by the parties, 10 cases were dismissed, proceedings were terminated or adjourned sine die in 35 cases, and 92 cases were pending at March 31, 1988.

Accreditation of Employer Organizations

Four applications were processed under sections 125 through 127 of the Act for accreditation of employer organizations as bargaining agents of employers in the construction industry. One case was granted, affecting 18 firms employing 345 workers, proceedings were adjourned sine die in 1 case; and two cases were pending at March 31, 1988.

Declaration and Direction of Unlawful Strike

In 1987-88, the Board dealt with four applications seeking a declaration under section 92 against an alleged unlawful strike by employees in the construction industry. Two cases were settled, and proceedings were adjourned sine die in two cases.

Twenty-eight applications were dealt with seeking directions under section 92 against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 6 cases, 3 cases were dismissed, 11 were withdrawn or settled, proceedings were terminated or adjourned sine die in 6 cases, and 2 cases were pending at March 31, 1988.

Twenty-three applications were also processed, seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. Directions were issued in 3 cases, 8 were withdrawn or settled, proceedings were terminated or adjourned sine die in 8 cases, and 4 were pending at March 31, 1988.

Declaration and Direction of Unlawful Lock-out

Two applications were processed in 1987-88, seeking declaration under section 93 of the Act against alleged unlawful lock-out by construction employers. Proceedings were adjourned sine die in 1 case and one was pending at March 31, 1988.

Three applications were also processed in seeking directions under section 93 of the Act against alleged unlawful lock-outs by non-construction employers. Two cases were withdrawn, and proceedings were adjourned sine die in one case.

Consent to Prosecute

In 1987-88, the Board dealt with 11 applications under section 101 of the Act, requesting consent to institute prosecution in court against trade unions and employers for alleged commission of offences under the Act.

Of the 11 applications processed, which included two carried over from the previous year, 5 were disposed of, six were pending at March 31, 1988. Of the cases disposed of, four were settled or withdrawn, and proceedings were terminated in one case.

Complaints of Contravention of Act

Complaints alleging contraventions of the Act may be filed with the Board for processing under section 89 of the Act. In handling these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a labour relations officer.

In 1987-88, the Board received 868 complaints under this section, an increase of 6 cases over the 862 filed in 1986-87. In complaints against employers, the principal charges were alleged illegal discharge or discrimination of employees for union activity in violation of sections 64 and 66 of the Act, illegal changes in wages and working conditions contrary to section 79, and failure to bargain in good faith under section 15. These charges were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

In addition to the complaints received, 223 cases were carried over from 1986-87. Of the 1,091 total processed, 734 were disposed of, proceedings were adjourned sine die in 73 cases, and 284 cases were pending at March 31, 1988.

In 587 or 80 percent of the 734 dispositions, voluntary settlements and withdrawals of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 27 cases, 101 cases were dismissed, and proceedings were terminated in the remaining 19 cases.

In the cases settled by labour relations officers and those in which Board awards were made, compensation amounting to about \$532,688 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 27 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay compensation to 30 employees for wages and benefits lost in a specified period, and 22 of these employees were also ordered reinstated.

In addition, employers in 6 cases were ordered to post a Board notice of the employees' rights under the Act, and cease and desist directions were issued to employers in 2 other cases.

Construction Industry Grievances

Grievances over alleged violation of the provisions of a collective agreement in the construction industry may be referred to the Board for resolution under section 124 of the Act. As with complaints of contraventions of the Act, the Board encourages voluntary settlement of these cases by the parties involved, with the assistance of a labour relations officer.

In 1987-88, the Board received 865 cases under this section. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds and deduction of union dues, and alleged violation of the subcontracting and hiring arrangements in the collective agreement.

In addition to the cases received, 143 were carried over from 1986-87. Of the total 1008 processed, 671 were disposed of, proceedings were adjourned sine die in 200 cases, and 137 cases were pending at March 31, 1988.

In 603 or 90 percent of the 671 dispositions, voluntary settlements and withdrawals of the grievance were obtained by labour relations officers, awards were made by the Board in 35 cases, 14 cases were dismissed, and proceedings were terminated in the remaining 19 cases. (Table 4).

Payments totalling about \$1,503,147 were recovered for unions and employees in the cases settled by labour relations officers and those in which Board awards were made.

MISCELLANEOUS APPLICATIONS AND COMPLAINTS

Right of Access

In 1987-88, the Board dealt with twenty applications in which the union sought access to the employer's property under section 11 of the Act. Access was granted in five cases, 14 were withdrawn or settled and one case was pending at March 31, 1988.

Religious Exemption

Three applications were processed under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. One case was withdrawn, and two were pending at March 31, 1988.

Early Termination of Collective Agreements

Twenty-five applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 20 cases, one case was withdrawn, proceedings were terminated in one case, and three were pending at March 31, 1988.

Union Financial Statements

Seven complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements of the union's affairs. Two cases were settled, proceedings were terminated in one case, and four were pending at March 31, 1988.

Jurisdictional Disputes

Sixty-three complaints were dealt with under section 91 of the Act, involving union work jurisdiction. Five cases were dismissed, twelve cases were settled or withdrawn, proceedings were adjourned sine die in five cases, and 41 cases were pending at March 31, 1988.

Determination of Employee Status

The Board dealt with 122 applications under section 106(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Thirty-eight cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Determinations were made by the Board in 15 cases, in which 26 of the 41 persons in dispute were found to be employees under the Act. Ten cases were dismissed, proceedings were terminated or adjourned sine die in 19 cases, and 40 cases were pending at March 31, 1988.

Referrals by Minister of Labour

In 1987-88, the Board dealt with 7 cases referred by the Minister under section 107 of the Act for opinions or questions related to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under sections 44 or 45. Determinations to declare the minister's authority to appoint a conciliation officer were made in 3 cases, 1 case was dismissed, 1 was settled, proceedings were adjourned sine die in 1 case, and one case was pending at March 31, 1988.

Two cases were referred to the Board by the Minister under section 139(4) of the Act, concerning the designations of the employee and employer agencies in a bargaining relationship in the industrial, commercial and institutional sector of the construction industry. The Board advised the minister that no change was warranted to the designation of the employee bargaining agency in one case, and one case was pending at March 31, 1988.

Trusteeship Reports

One statement was filed with the Board during the year reporting that local unions had been placed under trusteeship.

First Agreement Arbitration

On May 26, 1986, section 40a was added to the *Labour Relations Act* to enable first collective agreements to be settled by arbitration. The process involves two stages: the parties must first apply to the Board for a direction to arbitrate; then if the direction is granted, they may choose to have the settlement arbitrated by the Board or privately by a board of arbitration.

Up to the end of the fiscal year, the Board received 24 applications for directions to settle first agreements by arbitration. Directions were issued in 5 cases, 1 case was dismissed, 8 cases were settled, proceedings were terminated or adjourned sine die in 7 cases, and 3 cases were pending at March 31, 1988. (Table 1).

The Board was requested to arbitrate a settlement of the first agreement in 1 case. The arbitration was settled by the parties.

Occupational Health and Safety Act

In 1987-88, the Board received 64 complaints under section 24 of the Occupational Health and Safety Act alleging wrongful discipline or discharge of employees for acting in compliance with this Act. Thirty-two cases were carried over from 1986-87.

Of the total 96 cases processed, 57 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4). Two cases were granted and 10 were dismissed by the Board, proceedings were terminated or adjourned sine die in 8 cases, and the remaining 19 were pending at March 31, 1988.

Colleges Collective Bargaining Act

Five complaints were dealt with under section 78 of the *Colleges Collective Bargaining Act*, alleging contraventions of the Act. One case was settled and 1 was dismissed by the Board, proceedings were adjourned sine die in two cases and 1 was pending at March 31, 1988.

Two applications were dealt with under section 82 for a decision on the status of individuals as employees under the Act. One case was settled, and proceedings were adjourned sine die in one case.

Statistics on the cases under the *Colleges Collective Bargaining Act* dealt with by the Board are included in Table 1.

VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

The Ontario Labour Relations Board Reports: A monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

A Guide to the Labour Relations Act: A booklet explaining in layman's terms the provisions of the *Labour Relations Act* and the Board's practices. This publication is revised periodically to reflect current law and Board practices. The Guide is also available in French.

Monthly Highlights: A publication in leaflet form containing scope notes of significant Board decisions on a monthly basis. This publication also contains Board notices of interest to the industrial relations community and information relating to new appointments and other internal developments.

Pamphlets: To date the Board has published three pamphlets. Two of these, "Rights of Employees, Employers and Trade Unions" and "Certification by the Ontario Labour Relations Board", are available in English, French, Italian and Portuguese. The third pamphlet entitled "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board", describes unfair labour practice proceedings before the Board and also contains useful instructions in filling out Form 58, which is used to institute proceedings.

All of the Board's publications may be obtained by calling, writing, or visiting the Board's offices. The Ontario Labour Relations Board Reports is available on annual subscriptions, (January—December issues inclusive) presently priced at \$45.00. Individual copies of the report may be purchased at the Government of Ontario Bookstore. Order forms for subscriptions are available from the Board.

IX STAFF AND BUDGET

At the end of the fiscal year 1987-88, the Board employed a total of 121 persons on a full-time basis. The Board has two types of employees. The Chair, Alternate Chair, Vice-Chairs and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil service appointees.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$7,115,200.

X STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1987-88.

Table 1:	Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1987-88
Table 2:	Applications and Complaints Received and Disposed of, Fiscal Years 1983-84 to 1987-88
Table 3:	Labour Relations Officer Activity in Cases Processed, Fiscal Year 1987-88
Table 4:	Labour Relations Officer Settlements in Cases Disposed of, Fiscal Year 1987-88
Table 5:	Results of Representation Votes Conducted, Fiscal Year 1987-88
Table 6:	Results of Representation Votes in Cases Disposed of, Fiscal Year 1987-88
Table 7:	Time Required to Process Applications and Complaints Disposed of, by Major Type of Case, Fiscal Year 1987-88
Table 8:	Union Distribution of Certification Applications Received and Disposed of, Fiscal Year 1987-88
Table 9:	Industry Distribution of Certification Applications Received and Disposed of, Fiscal Year 1987-88
Table 10:	Employees Covered by Certification Applications Granted, Fiscal Year 1987-88
Table 11:	Time Required to Process Certification Applications Granted, Fiscal Year 1987-88
Table 12:	Employment Status of Employees in Bargaining Units Certified, by Industry, Fiscal Year 1987-88
Table 13:	Employment Status of Employees in Bargaining Units Certified, by Union, Fiscal Year 1987-88
Table 14:	Occupational Groups in Bargaining Units Certified, by Industry, Fiscal Year 1987-88
Table 15:	Occupational Groups in Bargaining Units Certified, by Union, Fiscal Year 1987-88

Table 1

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1987-88

Type of Case	Caseload		Disposed of, Fiscal Year 1987-88									Pending March 31, 1988
	Total	Pending April 1, 87	Received Fiscal Year 1987-88	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die		
Total	4,484	901	3,583	3,112	994	380	70	685	983	366	1,006	
Certification of Bargaining Agents	1,398	273	1,125	1,108	750	183	4	171	—	18	272	
Declaration of Termination of Bargaining Rights	200	41	159	133	59	41	3	29	1	2	65	
Declaration of Successor Trade Union	81	4	77	54	45	1	—	8	—	1	26	
Declaration of Successor Employer or Common Employer Status	261	76	185	144	17	10	10	21	86	25	92	
Accreditation	4	3	1	1	1	—	—	—	—	1	2	
Declaration of Unlawful Strike	4	—	4	2	—	—	—	—	2	2	—	
Declaration of Unlawful Lockout	2	1	1	—	—	—	—	—	—	1	1	
Direction respecting Unlawful Strike	51	5	46	33	9	3	2	7	12	12	6	
Direction respecting Unlawful Lockout	3	—	3	2	—	—	—	2	—	1	—	
Consent to Prosecute	11	2	9	5	—	—	1	3	1	—	6	
Contravention of Act	1,091	223	868	734	27	101	19	196	391	73	284	
Right of Access	20	13	7	19	5	—	—	7	7	—	1	
Exemption from Union Security Provision in Collective Agreement	3	—	3	1	—	—	—	1	—	—	2	
Early Termination of Collective Agreement	25	3	22	22	20	—	1	1	—	—	3	
Trade Union Financial Statement	7	—	7	3	—	—	1	—	2	—	4	
Jurisdictional Dispute	63	28	35	17	—	5	—	7	5	5	41	
(Cont'd)												

(Cont'd)

Table 1 (Cont'd)

Total Applications and Complaints Received, Disposed of and Pending
Fiscal Year 1987-88

Type of Case	Caseload		Disposed of, Fiscal Year 1987-88								Pending March 31, 1988
	Total	Pending April 1, 87	Received Fiscal Year 1987-88	Total Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die		
Total	4,484	901	3,583	3,112	994	380	70	685	983	366	1,006
Referral on Employee Status	122	47	75	68	15	10	5	18	20	14	40
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	7	2	5	5	3	1	—	—	1	1	1
Referral of Construction Industry Grievance	1,008	143	865	671	35	14	19	192	411	200	137
Referral from Minister on Construction Bargaining Agency	2	1	1	1	1	—	—	—	—	—	1
Complaint under Occupational Health and Safety Act	96	32	64	72	2	10	3	22	35	5	19
First Agreement Arbitration Direction	24	4	20	16	5	1	2	—	8	5	3
First Agreement Arbitration Proceedings	1	—	1	1	—	—	—	—	1	—	—

* Includes cases in which a request was granted or a determination made by the Board.

Table 2

Applications and Complaints Received and Disposed of
Fiscal Years 1983-84 to 1987-88

Type of Case	Number Received, Fiscal Year						Number Disposed of, Fiscal Year					
	Total	1983-84	1984-85	1985-86	1986-87	1987-88	Total	1983-84	1984-85	1985-86	1986-87	1987-88
Total	17,040	3,135	3,509	3,236	3,577	3,583	15,058	2,797	2,866	2,912	3,371	3,112
Certification of bargaining agents	5,203	871	1,148	1,025	1,034	1,125	4,950	817	985	1,034	1,006	1,108
Declaration of termination of bargaining rights	764	124	155	155	171	159	717	119	139	135	191	133
Declaration of successor trade union or employer	663	22	193	88	175	185	561	19	131	85	190	136
Declaration of common employer status	595	174	104	117	123	77	466	118	58	81	147	62
Accreditation	8	1	3	—	3	1	5	—	1	1	2	1
Declaration of unlawful strike or lockout	24	7	2	6	4	5	19	3	6	5	3	2
Directions respecting unlawful strike or lockout	266	63	39	52	63	49	198	47	31	36	49	35
Consent to prosecute	54	15	11	11	8	9	44	12	11	8	8	5
Contravention of Act	4,377	872	920	855	862	868	3,899	787	729	758	891	734
Referral of construction industry grievance	4,050	824	751	745	865	865	3,301	732	620	614	664	671
Miscellaneous	978	162	183	182	232	219	850	143	155	155	189	208
First Agreement Arbitration Direction	54	—	—	—	34	20	44	—	—	—	28	16
First Agreement Arbitration Proceedings	4	—	—	—	3	1	4	—	—	—	3	1

Table 3

Labour Relations Officer Activity in Cases Processed*
Fiscal Year 1987-88

Type of Case	Cases in Which Activity Completed						
	Total Cases Assigned	Settled			Referred to Board	Sine Die	Pending
		Total	Number	Percent			
Total	2,230	1,570	1,363	86.8	207	258	402
Certification	460	400	305	76.3	95	3	57
Interim certificate	11	11	10	90.9	1	—	—
Pre-hearing application	127	102	91	89.2	11	1	24
Other application	322	287	204	71.1	83	2	33
Contravention of Act	801	515	457	88.7	58	61	225
Construction industry grievance	864	579	533	92.0	46	181	104
Employee status	41	29	24	82.8	5	9	3
Occupational Health and Safety Act	64	47	44	93.6	3	4	13

* Includes all cases assigned to labour relations officers, which may or may not have been disposed of by the end of the year.

Table 4

Labour Relations Officer Settlements in Cases Disposed of*
Fiscal Year 1987-88

Type of Case	Officer Settlements		
	Total Disposed of	Number	Percent of Dispositions
Total	1,545	1,285	83.2
Contravention of Act	734	587	79.9
Construction industry grievance	671	603	89.8
Employee status	68	38	55.8
Occupational Health and Safety Act	72	57	79.1

* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.

Table 5
Results of Representation Votes Conducted*
Fiscal Year 1987-88

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	
			Total	In Favour of Unions
Total	281	21,894	15,345	9,121
Certification	232	19,691	13,508	8,571
Pre-hearing cases				
One union	55	7,683	4,944	2,456
Two unions	68	7,329	4,877	3,857
Three unions	2	548	473	458
Construction cases				
One union	8	95	81	34
Two unions	1	6	6	5
Regular cases				
One union	89	3,405	2,613	1,386
Two unions	10	625	514	375
Termination of Bargaining Rights	49	2,203	1,837	550

* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

Table 6

Results of Representation Votes in Cases Disposed of* Fiscal Year 1987-88

Type of Case	Number of Votes			Eligible Votes			All Ballots Cast			Ballots Cast in Favour of Unions		
	Total	Won	Lost	In Votes		Total	In Votes		Total	In Votes		Lost
				Won	Lost		Won	Lost		Won	Lost	
Total	286	157	129	21,594	14,694	6,900	15,388	9,625	5,763	9,162	7,254	1,908
Certification	239	147	92	19,390	14,280	5,110	13,544	9,243	4,301	8,572	7,021	1,551
Pre-hearing cases												
One union	66	41	25	7,300	4,611	2,689	4,800	2,593	2,207	2,488	1,734	754
Two unions	65	53	12	7,308	6,625	683	4,959	4,388	571	3,902	3,665	237
Three unions	2	2	—	548	548	—	473	473	—	320	320	—
Construction cases												
One union	9	2	7	101	17	84	88	17	71	37	12	25
Two unions	1	1	—	6	6	—	6	6	—	5	5	—
Regular cases												
One union	86	40	46	3,502	2,059	1,443	2,704	1,427	1,277	1,445	966	479
Two unions	10	8	2	625	414	211	514	339	175	375	319	56
Termination of Bargaining Rights	46	10	36	1,996	414	1,582	1,658	382	1,276	517	233	284
Successor Employer	1	—	1	208	—	208	186	—	186	73	—	73

* Refers to final representation votes conducted in cases disposed of during the fiscal year. This table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.

Table 7

Time Required to Process Applications and Complaints Disposed of, by Major Type of Case Fiscal Year 1987-88

Time Taken (Calendar Days)	All Cases		Certification Cases		Section 89 Cases		Section 124 Cases		All Other Cases	
	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent	Dispo- sitions	Cumu- lative Percent
Total	3,112	100.0	1,108	100.0	734	100.0	671	100.0	599	100.0
Under 8 days	47	1.5	8	0.7	15	2.0	5	0.7	19	3.2
8-14 days	229	8.9	22	2.7	28	5.9	163	25.0	16	5.8
15-21 days	384	21.2	113	12.9	44	11.9	205	55.6	22	9.5
22-28 days	297	30.8	139	25.5	66	20.8	63	65.0	29	14.4
29-35 days	288	40.0	162	40.1	52	27.9	37	70.5	37	20.5
36-42 days	203	46.5	94	48.6	49	34.6	17	73.0	43	27.7
43-49 days	146	51.2	66	54.5	42	40.3	14	75.1	24	31.7
50-56 days	156	56.2	71	60.9	37	45.4	13	77.0	35	37.6
57-63 days	111	59.8	44	64.9	24	48.6	12	78.8	31	42.7
64-70 days	104	63.1	39	68.4	28	52.5	11	80.5	26	47.1
71-77 days	88	66.0	33	71.4	20	55.2	12	82.3	23	50.9
78-84 days	82	68.6	22	73.4	23	58.3	10	83.8	27	55.4
85-91 days	65	70.7	24	75.5	20	61.0	3	84.2	18	58.4
92-98 days	57	72.5	19	77.3	18	63.5	6	85.1	14	60.8
99-105 days	55	74.3	12	78.3	19	66.1	8	86.3	16	63.4
106-126 days	163	79.5	49	82.8	58	74.0	16	88.7	40	70.1
127-147 days	111	83.1	32	85.6	32	78.3	6	89.6	41	77.0
148-168 days	76	85.5	26	88.0	32	82.7	3	90.0	15	79.5
Over 168 days	450	100.0	133	100.0	127	100.0	67	100.0	123	100.0

Table 8

**Union Distribution of Certification Applications Received and Disposed of
Fiscal Year 1987-88**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed**	Withdrawn
All Unions	1,125	1,108	750	187	171
CLC* Affiliates	467	463	315	91	57
Aluminum Brick & Glass Wkrs.	3	2	1	1	—
Bakery & Tobacco Wkrs.	2	1	1	—	—
Brewery and Soft Drink Wkrs.	2	2	1	1	—
Canadian Air Line Employees	—	1	1	—	—
Canadian Auto Workers	33	30	23	6	1
Canadian Paperworkers	21	20	16	2	2
Canadian Public Employees (CUPE)	63	63	45	10	8
Clothing and Textile Workers	3	3	1	2	—
Communications Workers (Amer)	1	1	1	—	—
Communications-Electrical Wkrs.	2	1	—	1	—
Electrical Workers (IPBEW)	2	1	—	1	—
Electrical Workers (UE)	5	7	3	3	1
Energy and Chemical Workers	15	16	11	4	1
Food and Commercial Workers	44	46	29	13	4
Glass, Pottery & Plastic Wkrs.	1	1	—	1	—
Graphic Communications Union	8	11	7	2	2
Hotel Employees	10	12	4	7	1
Ladies Garment Workers	1	3	2	—	1
Leather & Plastic Workers	1	1	1	—	—
Machinists	4	5	5	—	—
Molders	1	1	—	1	—
Newspaper Guild	1	2	2	—	—
Office and Professional Employees	3	2	2	—	—
Ontario Liquor Board Employees	4	4	2	1	1
Ontario Public Service Employees	17	25	19	4	2
Public Service Alliance	4	3	1	2	—
Railway, Transport and General Workers	9	8	5	—	3
Retail Wholesale Employees	23	22	16	3	3
Rubber Workers	4	5	3	2	—
Service Employees International	38	39	28	5	6
Theatrical Stage Employees	1	3	1	2	—
Transit Union (Intl.)	1	1	—	—	1
United Steelworkers	87	83	51	12	20
United Textile Workers	2	1	1	—	—
Woodworkers	51	37	32	5	—

* Canadian Labour Congress.

** Includes cases that were terminated.

Table 8 (Cont'd)

Non-CLC Affiliates	658	645	435	96	114
Allied Health Professionals	2	2	1	1	—
Asbestos Workers	3	1	1	—	—
Auto Workers	7	4	3	1	—
Boilermakers	2	1	1	—	—
Bricklayers International	6	4	2	1	1
Carpenters	115	107	83	16	8
Canadian Educational Workers	1	—	—	—	—
Canadian Operating Engineers	2	3	2	1	—
Christian Labour Association	11	9	5	4	—
Electrical Workers (IBEW)	26	21	14	3	4
Elevator Constructors	1	1	1	—	—
Guards Association	1	—	—	—	—
Headwear Workers	2	3	3	—	—
Independent Local Union	21	37	23	8	6
International Operating Engineers	75	65	51	5	9
Labourers	158	164	100	23	41
Occasional Teachers Association	2	2	2	—	—
Ontario English Catholic Teachers	5	3	2	1	—
Ontario Nurses Association	28	32	30	—	2
Ontario Public School Teachers	7	6	4	—	2
Ontario Secondary School Teachers	35	44	24	3	17
Painters	24	22	18	2	2
Plant Guard Workers	3	2	2	—	—
Plasterers	1	1	1	—	—
Plumbers	31	25	12	12	1
Sheet Metal Workers	18	13	11	—	2
Structural Iron Workers	23	20	9	5	6
Sudbury Mine Workers	1	1	—	1	—
Teamsters	33	36	22	6	8
Textile & Chemical Union	3	3	2	—	1
Textile Processors	11	11	5	2	4
Other	—	2	1	1	—

Table 9

**Industry Distribution of Certification Applications Received and Disposed of
Fiscal Year 1987-88**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed*	Withdrawn
All Industries	1,125	1,108	750	187	171
Manufacturing	253	273	178	62	33
Food, beverages	26	39	25	10	4
Tobacco products	—	—	—	—	—
Rubber, plastic products	11	12	10	1	1
Leather	2	1	1	—	—
Textile	4	3	3	—	—
Knitting mills	2	2	—	1	1
Clothing	6	4	3	—	1
Wood	28	29	22	5	2
Furniture, fixtures	10	10	7	2	1
Paper	17	17	14	2	1
Printing, publishing	12	16	10	4	2
Primary metals	5	6	3	1	2
Fabricated metals	37	35	24	5	6
Machinery	12	14	8	5	1
Transportation equipment	24	23	15	7	1
Electrical products	9	9	4	2	3
Non-metallic minerals	20	25	16	6	3
Petroleum, coal	1	1	1	—	—
Chemicals	11	12	5	4	3
Other manufacturing	16	15	7	7	1
Non-Manufacturing	872	835	572	125	138
Agriculture	1	—	—	—	—
Forestry	12	10	8	1	1
Fishing, trapping	—	—	—	—	—
Mining, quarrying	6	8	6	1	1
Transportation	39	28	11	8	9
Storage	1	2	—	2	—
Communications	1	1	1	—	—
Electric, gas, water	10	13	10	2	1
Wholesale trade	23	27	18	6	3
Retail trade	37	38	25	9	4
Finance, insurance	3	3	3	—	—
Real Estate	2	2	2	—	—
Education, related services	104	86	47	12	27
Health, welfare services	120	122	107	9	6
Religious organizations	2	2	2	—	—
Recreational services	6	6	3	3	—
Management services	9	7	5	1	1
Personal services	1	3	2	1	—
Accommodation, food services	48	56	31	14	11
Other services	20	21	17	1	3

Table 9 (Cont'd)

Federal government	1	—	—	—	—
Provincial government	—	1	1	—	—
Local government	18	23	15	2	6
Other government	3	1	1	—	—
Construction	404	375	257	53	65
Other	1	—	—	—	—

* Includes cases that were terminated.

Table 10

**Employees Covered by Certification Applications Granted
Fiscal Year 1987-88**

Employee Size*	Total		Construction**		Non-Construction	
	Number of Applications	Number of Employees	Number of Applications	Number of Employees	Number of Applications	Number of Employees
Total	750	27,085	262	1,861	488	25,224
2-9 employees	338	1,628	206	868	132	760
10-19 employees	140	1,913	35	468	105	1,445
20-39 employees	117	3,279	20	476	97	2,803
40-99 employees	95	5,874	1	49	94	5,825
100-199 employees	35	4,845	—	—	35	4,845
200-499 employees	20	5,454	—	—	20	5,454
500 employees or more	5	4,092	—	—	5	4,092

* Refers to the total number of employees in one or more bargaining units certified in an application. A total of 806 bargaining units were certified in the 750 applications in which certification was granted.

** Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the 257 certified construction industry applications shown in Table 9, which includes all applications involving construction employers whether processed under the construction industry provisions of the Act or not.

Table 11

Time Required to Process Certification Applications Granted*
Fiscal Year 1987-88

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
Total	750	100.0	488	100.0	262	100.0
Under 8 days	—	—	—	—	—	—
8-14 days	9	1.2	—	—	9	3.4
15-21 days	78	11.6	7	1.4	71	30.5
22-28 days	106	25.7	69	15.6	37	44.7
29-35 days	135	43.7	105	37.1	30	56.1
36-42 days	64	52.3	56	48.6	8	59.2
43-49 days	51	59.1	41	57.0	10	63.0
50-56 days	56	66.5	49	67.0	7	65.6
57-63 days	34	71.1	28	72.7	6	67.9
64-70 days	23	74.1	16	76.0	7	70.6
71-77 days	18	76.5	12	78.5	6	72.9
78-84 days	8	77.6	4	79.3	4	74.4
85-91 days	12	79.2	7	80.7	5	76.3
92-98 days	11	80.7	3	81.4	8	79.4
99-105 days	10	82.0	5	82.4	5	81.3
106-126 days	30	86.0	24	87.3	6	83.6
127-147 days	22	88.9	10	89.3	12	88.2
148-168 days	20	91.6	10	91.4	10	92.0
169 days and over	63	100.0	42	100.0	21	100.0

* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.

Table 12

Employment Status of Employees in Bargaining Units Certified by Industry Fiscal Year 1987-88

Industry	All Units			Full-time			Part-time			Full-time & Part-time			All Employees No Exclusion Specified		
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Empls.
All Industries	806	27,085	181	7,202	52	4,289	99	3,144	474	12,450					
Manufacturing	181	11,323	61	3,696	1	5	23	1,151	96	6,471					
Food, beverages	26	828	2	167	—	—	3	80	21	581					
Rubber, plastics	10	448	7	314	—	—	2	126	1	8					
Leather	1	1,066	1	1,066	—	—	—	—	—	—					
Textile	3	185	—	—	—	—	—	—	—	—					
Clothing	3	122	1	83	—	—	—	—	—	—					
Wood	22	1,519	5	396	—	—	—	—	—	—					
Furniture, fixtures	7	130	4	40	—	—	1	15	16	1,108					
Paper	14	2,305	2	84	—	—	—	—	3	90					
Printing, publishing	10	625	6	349	—	—	2	243	12	2,221					
Primary metals	3	46	1	17	—	—	—	—	2	33					
Fabricating metals	24	605	6	219	—	—	6	171	12	215					
Machinery	8	530	1	49	—	—	3	235	4	246					
Transportation equipment	16	711	5	226	1	5	2	203	8	277					
Electrical products	4	382	2	230	—	—	—	—	2	152					
Non-metallic minerals	16	1,657	11	424	—	—	1	18	4	1,215					
Petroleum, coal	1	7	—	—	—	—	—	—	1	7					
Chemicals	5	110	2	18	—	—	2	47	1	45					
Other manufacturing	8	47	5	14	—	—	1	13	2	20					
Non-Manufacturing	625	15,762	120	3,506	51	4,284	76	1,993	378	5,979					
Forestry	8	1,251	1	98	—	—	—	—	7	1,153					
Mining, quarrying	6	83	—	—	—	—	—	—	6	83					
Transportation	11	283	2	17	1	34	1	14	7	218					
Communications	1	26	—	—	—	—	—	—	1	26					
Electric, gas, water	10	232	5	122	1	7	—	—	4	103					
Wholesale trade	22	445	9	114	—	—	5	204	8	127					
Retail trade	25	682	13	377	—	—	4	38	8	267					
Finance, insurance carriers	3	45	—	—	—	—	2	40	1	5					
Real estate, insurance agencies	2	11	2	11	—	—	—	—	—	—					
Education, related services	49	4,879	5	736	31	3,684	3	33	10	426					
Health, welfare services	137	3,793	51	1,246	14	507	40	1,100	32	940					
Religious Organizations	2	28	—	—	—	—	1	15	1	13					
Recreational services	4	76	1	7	—	—	1	27	2	42					
Management services	5	109	2	79	—	—	—	—	3	30					
Personal services	2	62	—	—	—	—	—	—	2	62					
Accommodation, food services	42	1,012	15	366	1	15	15	290	11	341					
Other services	18	206	5	49	1	10	—	—	12	147					
Provincial government	1	18	—	—	—	—	—	—	1	18					
Local government	18	680	6	260	2	27	3	229	7	164					
Other government	2	16	1	13	—	—	1	3	—	—					
Construction	257	1,825	2	11	—	—	—	—	255	1,814					

Table 13

Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1987-88

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	806	27,085	181	7,202	52	4,289	99	3,144	474	12,450
CLC	328	15,088	109	5,512	9	510	86	2,475	124	6,591
Aluminum Brick and Glass Workers	1	2	1	2	—	—	—	—	—	—
Bakery and Tobacco Workers	1	25	—	—	—	—	1	25	—	—
Brewery and Soft Drink Workers	1	15	—	—	—	—	—	—	1	15
Canadian Paperworkers	19	1,224	2	129	—	—	3	48	14	1,047
Canadian Public Employees (CUPE)	54	2,941	18	1,351	4	425	16	649	16	516
Clothing and Textile Workers	1	94	1	94	—	—	—	—	—	—
Electrical Workers (UE)	3	216	—	—	—	—	1	169	2	47
Energy and Chemical Workers	11	273	1	14	—	—	5	121	5	138
Food and Commercial Workers	33	884	10	263	2	49	7	125	14	447
Graphic Communications Union	7	247	4	118	—	—	2	106	1	23
Hotel Employees	7	190	3	87	—	—	3	65	1	38
Ladies Garment Workers	2	146	2	146	—	—	—	—	—	—
Leather & Plastic Workers	1	33	1	33	—	—	—	—	—	—
Machinists	5	218	3	94	—	—	1	84	1	40
Newspaper Guild	2	33	—	—	—	—	—	—	2	33
Office and Professional Employees	2	29	—	—	—	—	—	—	2	29
Ontario Liquor Board Employees	2	33	2	33	—	—	—	—	—	—
Ontario Public Service Employees	22	655	6	165	1	8	9	330	6	152
Public Service Alliance	1	8	—	—	—	—	—	—	1	8
Railway, Transport and General Workers	5	154	4	72	—	—	—	—	1	82
Retail Wholesale Employees	17	359	5	140	—	—	2	8	10	211
Rubber Workers	3	1,075	3	1,075	—	—	—	—	—	—
Service Employees International	38	1,007	15	438	1	18	17	348	5	203
Theatrical Stage Employees	1	4	—	—	—	—	—	—	1	4
United Auto Workers	3	50	1	16	—	—	1	27	1	7
United Steelworkers	55	1,556	22	969	1	10	17	351	15	226
United Textile Workers	1	45	—	—	—	—	—	—	1	45
Woodworkers	30	3,572	5	273	—	—	1	19	24	3,280

Table 13 (Cont'd)

Employment Status of Employees in Bargaining Units Certified by Union
Fiscal Year 1987-88

Industry	All Units		Full-time		Part-time		Full-time & Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	478	11,997	72	1,690	43	3,779	13	669	350	5,859
Allied Health Professionals	1	61	—	—	—	—	—	—	1	61
Asbestos Workers	1	2	—	—	—	—	—	—	1	2
Boilermakers	1	5	—	—	—	—	—	—	1	5
Bricklayers International	2	5	—	—	—	—	—	—	2	5
Carpenters	87	472	2	7	—	—	1	15	84	450
Canadian Auto Workers	23	2,041	7	373	—	—	5	556	11	1,112
Canadian Operating Engineers	2	11	1	7	—	—	—	—	1	4
Christian Labour Association	7	134	4	96	1	2	1	30	1	6
Communications Workers (AMER)	1	52	1	52	—	—	—	—	—	—
Electrical Workers (IBEW)	14	171	3	61	1	7	—	—	10	103
Elevator Constructors	1	7	—	—	—	—	—	—	1	7
Headwear Workers	3	10	3	10	—	—	—	—	—	—
Independent Local Union	24	1,717	2	45	1	9	—	—	21	1,663
Industrial Mechanical Workers	1	21	—	—	—	—	—	—	1	21
International Operating Engineers	52	471	5	60	—	—	—	—	47	411
Labourers	101	874	5	19	—	—	—	—	96	855
Occasional Teachers Association	2	225	—	—	2	225	—	—	—	—
Ontario English Catholic Teachers	2	85	—	—	2	85	—	—	—	—
Ontario Nurses Association	43	639	17	142	11	104	3	44	12	349
Ontario Public School Teachers	4	985	—	—	4	985	—	—	—	—
Ontario Secondary School Teachers	24	2,450	1	9	21	2,362	—	—	2	79
Painters	18	172	2	55	—	—	—	—	16	117
Plant Guard Workers	2	23	1	15	—	—	—	—	1	8
Plasterers	1	13	—	—	—	—	—	—	1	13
Plumbers	11	107	—	—	—	—	—	—	11	107
Sheet Metal Workers	11	115	—	—	—	—	—	—	11	115
Structural Iron Workers	9	38	—	—	—	—	1	4	8	34
Teamsters	23	699	14	552	—	—	2	20	7	127
Textile & Chemical Union	2	83	—	—	—	—	—	—	2	83
Textile Processors	5	309	4	187	—	—	—	—	1	122

Table 14

Occupational Groups in Bargaining Units Certified by Industry

Fiscal Year 1987-88

Industry	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Industries	806	27,085	624	19,886	37	694	90	4,766	15	433	40	1,306
Manufacturing	181	11,323	158	10,766	6	88	5	51	2	22	10	396
Food, beverage	26	828	23	809	1	4	1	7	1	8	—	—
Rubber, plastics	10	448	10	448	—	—	—	—	—	—	—	—
Leather	1	1,066	1	1,066	—	—	—	—	—	—	—	—
Textile	3	185	3	185	—	—	—	—	—	—	—	—
Clothing	3	122	2	119	—	—	—	—	—	—	1	3
Wood	22	1,519	20	1,497	1	8	—	—	1	14	—	—
Furniture, fixtures	7	130	6	126	1	4	—	—	—	—	—	—
Paper	14	2,305	11	2,158	1	33	—	—	—	—	2	114
Printing, publishing	10	625	8	592	1	14	1	19	—	—	—	—
Primary metals	3	46	1	17	1	25	—	—	—	—	1	4
Fabricated metals	24	605	23	602	—	—	—	—	—	—	1	3
Machinery	8	530	6	304	—	—	—	—	—	—	2	226
Transportation equipment	16	711	12	675	—	—	3	25	—	—	1	11
Electrical products	4	382	4	382	—	—	—	—	—	—	—	—
Non-metallic minerals	16	1,657	16	1,657	—	—	—	—	—	—	—	—
Petroleum, coal	1	7	1	7	—	—	—	—	—	—	1	32
Chemicals	5	110	4	78	—	—	—	—	—	—	—	—
Other manufacturing	8	47	7	44	—	—	—	—	—	—	1	3
Non-Manufacturing	625	15,762	466	9,120	31	606	85	4,715	13	411	30	910
Forestry	8	1,251	7	1,153	1	98	—	—	—	—	—	—
Mining, quarrying	6	83	6	83	—	—	—	—	—	—	—	—
Transportation	11	283	10	227	—	—	—	—	—	—	1	56
Communications	1	26	1	26	—	—	—	—	—	—	—	—
Electric, gas, water	10	232	7	160	2	41	1	31	—	—	—	—
Wholesale trade	22	445	16	367	3	51	—	—	1	7	2	20
Retail trade	25	682	11	196	—	—	—	—	11	401	3	85
Finance, insurance carriers	3	45	1	5	2	40	—	—	—	—	—	—
Real estate, insurance agencies	2	11	2	11	—	—	—	—	—	—	—	—
Education, related services	49	4,879	5	753	6	94	35	4,010	1	3	2	19
Health, welfare services	137	3,793	62	2,334	11	109	46	651	—	—	18	699
Religious Organizations	2	28	1	15	—	—	1	13	—	—	—	—
Recreational services	4	76	4	76	—	—	—	—	—	—	—	—
Management services	5	109	5	109	—	—	—	—	—	—	—	—
Personal services	2	62	2	62	—	—	—	—	—	—	—	—
Accommodation, food services	42	1,012	42	1,012	—	—	—	—	—	—	—	—
Other services	18	206	10	131	4	50	2	10	—	—	2	15
Provincial government	1	18	1	18	—	—	—	—	—	—	—	—
Local government	18	680	16	557	2	123	—	—	—	—	2	16
Other government construction	2	16	—	—	—	—	—	—	—	—	—	—
	257	1,825	257	1,825	—	—	—	—	—	—	—	—

Table 15

Occupational Groups in Bargaining Units Certified by Union Fiscal Year 1987-88

Industry	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	806	27,085	624	19,886	37	694	90	4,766	15	433	40	1,306
CLC	328	15,088	249	13,132	33	614	7	62	13	351	26	929
Aluminum Brick and Glass Workers	1	2	—	—	1	2	—	—	—	—	—	—
Bakery and Tobacco Workers	1	25	1	25	—	—	—	—	—	—	—	—
Brewery and Soft Drink Workers	1	15	1	15	—	—	—	—	—	—	—	—
Canadian Paperworkers	19	1,224	11	927	6	183	—	—	—	—	2	114
Canadian Public Employees (CUPE)	54	2,941	31	2,217	10	222	3	29	1	3	9	470
Clothing and Textile Workers	1	94	1	94	—	—	—	—	—	—	—	—
Electrical Workers (UE)	3	216	3	216	—	—	—	—	—	—	—	—
Energy and Chemical Workers	11	273	10	241	—	—	—	—	—	—	1	32
Food and Commercial Workers	33	884	26	626	1	4	1	4	5	250	—	—
Graphic Communications Union	7	247	7	247	—	—	—	—	—	—	—	—
Hotel Employees	7	190	7	190	—	—	—	—	—	—	—	—
Ladies Garment Workers	2	146	2	146	—	—	—	—	—	—	—	—
Leather & Plastic Workers	1	33	1	33	—	—	—	—	—	—	—	—
Machinists	5	218	4	134	—	—	—	—	—	—	1	84
Newspaper Guild	2	33	—	—	1	14	1	19	—	—	—	—
Office and Professional Employees	2	29	1	5	1	24	—	—	—	—	—	—
Ontario Liquor Board Employees	2	33	—	—	—	—	—	—	1	8	1	25
Ontario Public Service Employees	22	655	10	415	4	66	—	—	—	—	8	174
Public Service Alliance	1	8	1	8	—	—	—	—	—	—	—	—
Railway, Transport and General Workers	5	154	5	154	—	—	—	—	—	—	—	—
Retail Wholesale Employees	17	359	12	297	1	25	1	7	2	17	1	13
Rubber Workers	3	1,075	3	1,075	—	—	—	—	—	—	—	—
Service Employees International	38	1,007	35	989	2	8	—	—	—	—	1	10
Theatrical Stage Employees	1	4	1	4	—	—	—	—	—	—	—	—
United Auto Workers	3	50	3	50	—	—	—	—	—	—	—	—
United Steelworkers	55	1,556	45	1,441	6	66	1	3	2	42	1	4
United Textile Workers	1	45	1	45	—	—	—	—	—	—	—	—
Woodworkers	30	3,572	27	3,538	—	—	—	—	2	31	1	3

Table 15 (Cont'd)

Occupational Groups in Bargaining Units Certified by Union
Fiscal Year 1987-88

Industry	All Groups		Production & Related		Office, Clerical & Technical		Professional		Sales		Other	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	478	11,997	375	6,754	4	80	83	4,704	2	82	14	377
Allied Health Professionals	1	61	—	—	—	—	—	—	—	—	1	61
Asbestos Workers	1	2	1	2	—	—	—	—	—	—	—	—
Boilermakers	1	5	1	5	—	—	—	—	—	—	—	—
Bricklayers International	2	5	2	5	—	—	—	—	—	—	—	—
Carpenters	87	472	87	472	—	—	—	—	—	—	—	—
Canadian Auto Workers	23	2,041	22	1,899	—	—	—	—	—	—	1	142
Canadian Operating Engineers	2	11	2	11	—	—	—	—	—	—	—	—
Christian Labour Association	7	134	3	78	—	—	2	4	—	—	2	52
Communications Workers (AMER)	1	52	1	52	—	—	—	—	—	—	—	—
Electrical Workers (IBEW)	14	171	10	115	3	45	—	—	—	—	1	11
Elevator Constructors	1	7	1	7	—	—	—	—	—	—	—	—
Headwear Workers	3	10	2	7	—	—	—	—	—	—	1	3
Independent Local Union	24	1,717	17	1,385	1	35	4	278	—	—	2	19
Industrial Mechanical Workers	1	21	1	21	—	—	—	—	—	—	—	—
International Operating Engineers	52	471	47	435	—	—	1	7	—	—	4	29
Labourers	101	874	101	874	—	—	—	—	—	—	—	—
Occasional Teachers Association	2	225	—	—	—	—	2	225	—	—	—	—
Ontario English Catholic Teachers	2	85	—	—	—	—	2	85	—	—	—	—
Ontario Nurses Association	43	639	—	—	—	—	43	639	—	—	—	—
Ontario Public School Teachers	4	985	—	—	—	—	4	985	—	—	—	—
Ontario Secondary School Teachers	24	2,450	—	—	—	—	24	2,450	—	—	—	—
Painters	18	172	18	172	—	—	—	—	—	—	—	—
Plant Guard Workers	2	23	2	23	—	—	—	—	—	—	—	—
Plasterers	1	13	1	13	—	—	—	—	—	—	—	—
Plumbers	11	107	10	76	—	—	1	31	—	—	—	—
Sheet Metal Workers	11	115	11	115	—	—	—	—	—	—	—	—
Structural Iron Workers	9	38	9	38	—	—	—	—	—	—	—	—
Teamsters	23	699	19	557	—	—	—	—	2	82	2	60
Textile & Chemical Union	2	83	2	83	—	—	—	—	—	—	—	—
Textile Processors	5	309	5	309	—	—	—	—	—	—	—	—

*Ontario Labour Relations Board,
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400 University Avenue
Toronto, Ontario
M7A 1V4
416/965-4193

The Honourable Gregory Sorbara
Minister of Labour
400 University Avenue
14th Floor
Toronto, Ontario
M7A 1T7

Dear Minister:

It is my pleasure to provide to you the ninth Annual Report of the Ontario Labour Relations Board for the period commencing April 1, 1988 to March 31, 1989.

Sincerely,

Rosalie S. Abella
Chair

CHAIR'S MESSAGE

This message, like my first, is brief. The first relied on brevity because the newness of the position made verbosity presumptuous. This one is brief because the experience has left me with more to say than words can comfortably transmit. It has been an extraordinary voyage marked by nothing but positive feelings. From the beginning, I was struck by the Board's and the community's generosity and graciousness in welcoming an outsider. There has been a consistent willingness to offer constructive advice, and a remarkable willingness to be open to change. Much was tried in these five years to keep the Board responsive without harming its well-earned integrity and credibility, and much of that effort has enjoyed the elusive reward of acceptance. Clearly the process is ongoing and would never be complete during anyone's term. But to the extent that the Board remains the great institution it is, the credit goes entirely to the staff, Vice-Chairs, Board members, and labour relations community for their selfless and constant commitment to the best interests of the Ontario Labour Relations Board. It has been a privilege to have been part of the Board and its constituents for 5 years and I will always be grateful for the lessons they have taught me. Thank you for the enthusiastic assistance, for the friendship, and thank you especially for the joy of the experience.

I INTRODUCTION

This is the ninth issue of the Ontario Labour Relations Board's Annual Report, which commenced publication in the fiscal year 1980-81. This issue covers the fiscal year April 1, 1988 to March 31, 1989.

The report contains up-to-date information on the organizational structure and administrative developments of interest to the public and notes changes in personnel of the Board. As in previous years, this issue provides a statistical summary and analysis of the work-load carried by the Board during the fiscal year under review. Detailed statistical tables are provided on several aspects of the Board's functions.

This report contains a section highlighting some of the significant decisions of the Board issued during the year. A brief description of every Board matter that was subject to review by the courts during the year is provided. Since many of these court decisions are unreported, the summaries in the Board's Annual Report have been helpful to the practising bar. The report continues to provide a legislative history of the *Labour Relations Act* and notes any amendments to the Act that were passed during the fiscal year.

II A HISTORY OF THE ACT

In 1943, the Ontario Legislature engaged in one of the first attempts in Canada to institute an effective scheme of compulsory collective bargaining. *The Collective Bargaining Act, 1943*, S.O. 1943, c. 4 came about as a result of a public hearing before a select committee of the Provincial Legislative Assembly. Although the establishment of a "Labour Court" was not strenuously lobbied for by any of the interest groups which made submissions to the Select Committee, it was this option which the Select Committee saw fit to endorse. The Committee's report, in the form of a draft bill, was submitted to the Legislature on March 25th, 1943, and when enacted on April 14th, 1943, legitimized collective bargaining in Ontario under the Ontario Labour Court, which was a division of the Supreme Court of Ontario.

The Act of 1943 abolished the common law doctrines of conspiracy and restraint of trade as they had applied to trade unions, and gave employees a right to participate in union activity. A union was permitted to apply for certification as the bargaining agent for a group of employees. The Court had power to ascertain the appropriate unit for the purpose of collective bargaining. It has been pointed out that:

"...the shape and structure of the collective-bargaining system was to be determined by a court which was expected to develop policies that would promote orderly collective bargaining. It was recognized that the scheme of the Act involved both administrative and judicial functions. The Court was also empowered to delegate its non-judicial responsibilities so that it could develop an administrative infra-structure to support its 'judicial' role." (MacDowell, R.O., "Law and Practice before the Ontario Labour Relations Board" (1978), 1 Advocate's Quarterly 198 at 200.)

The Act contained several features which are standard in labour relations legislation today - management dominated organizations could not be certified; managerial employees were excluded from the Act; employers could not discriminate against employees for participation in union activity; employers were required to recognize a certified bargaining agent; and there was a duty to bargain in good faith. The Labour Court had broad remedial powers - something which the Ontario Labour Relations Board would not have for many years. The Labour Court was the only forum for resolution of disputes arising under a collective agreement. This function was to be performed without cost to the parties. It is now performed by private boards of arbitration or sole arbitrators and, when disputes arise in the construction industry, by the Labour Relations Board.

The Ontario Labour Court was to have a short lifespan (it opened in June 1943, and heard its last case in April, 1944). In his book, *The Ontario Labour Court 1943-44*, (Queen's University Industrial Relations Centre, Kingston, 1979), John A. Willes gives the following reasons for the Court's early demise:

"...the trade unions were complaining about the high cost of proceedings before the Court, the Judges were not eager to deal with labour matters under the Act, and most important, the Conservative party, that had promised to repeal the legislation if elected, formed the government in Ontario in the Spring of 1944."

The immediate circumstances which brought about the demise of the Labour Court (and hence the formation of a Board) was a war time move by the Federal Government to centralize

labour relations law. Owing to the division of powers between the Dominion and Provincial Governments, control over labour relations in Canada is shared between the two levels of government depending on whether the undertaking falls under Federal or Provincial jurisdiction. In 1907, the Federal Government attempted to bring labour disputes in public utilities and coal mines under Federal control by means of *The Industrial Disputes Investigation Act*. Disputes in other industries were often brought voluntarily within the provisions of the Act. In 1925 this Act was held by the Privy Council to be *ultra vires* the Dominion Parliament because it infringed on the Provincial power over "property and civil rights." (*Toronto Electric Commissioners v. Snider*, [1925] A.C. 396; [1925] 2 D.L.R. 5).

The Act was subsequently amended so as to encompass only those industries within Federal jurisdiction. This left labour relations largely in the hands of the Provincial legislatures, although by virtue of a clause in the Federal Act, Provinces could, in effect, "opt in" to the Federal system (all the Provinces except Prince Edward Island exercised this option for a time). However, given the constitutional situation in Canada, decentralization of labour policy was inevitable and the Ontario regime was representative of this decentralization. However, the fact that Canada was at war allowed the Federal Government to rely on its emergency power to pass Order in Council P.C. 1003. This Order adopted the general principles of the American *Wagner Act*, and called for an independent regulatory authority. The Ontario Labour Court was replaced by the Ontario Labour Relations Board, pursuant to *The Labour Relations Board Act, 1944*, S.O. 1944, c. 29, which was subject to the Federal Wartime Labour Relations Board. The Chairman of the fledgling Ontario Board was Jacob Finkleman, who had been the registrar of the Labour Court.

In 1947, the Ontario Labour Relations Board became independent of the Federal Government by virtue of *The Labour Relations Board Act, 1947*, S.O. 1947, c. 54. The next year, *The Labour Relations Act, 1948*, S.O. 1948, c. 51, was passed. The 1948 Act, which was enacted in anticipation of new Federal legislation, repealed the earlier *Labour Relations Board Acts* and empowered the Lieutenant-Governor in Council to make regulations "in the same form and to the same effect as that ... Act which may be passed by the Parliament of Canada at the session currently in progress ..." This Act was basically transitional in nature, since work was already under way on the drafting of separate Provincial legislation, which made its first appearance in *The Labour Relations Act, 1950*, S.O. 1950, c. 34.

The major function of the Board was, and still remains, certifying trade unions as bargaining agents. The history of the Board is largely a history of the acquisition of new powers and functions, as new ways of dealing with the problems inherent in industrial relations developed. Initially, however, the Board's role was fairly limited. There was no enforcement mechanism at the Board's disposal in 1950. The major enforcement method was prosecution, in which case the Board had to grant consent to prosecute. The Board had the power to declare a strike or lock-out unlawful, but this in itself fell short of being a very complete remedy. In a situation where an individual had been refused employment, discharged, discriminated against, threatened, coerced, or otherwise dealt with contrary of the Act, the appropriate remedy lay in an inquiry by a conciliation officer who then reported to the Minister who in turn could make an appropriate order.

Thus, outside of granting certifications and decertifications, the Board's power was quite limited. The power to make certain declarations, determinations, or to grant consent to prosecute under the Act was remedial only in a limited way. Of some significance during the fifties was the Board's acquisition of the power to grant a trade union "successor" status. (*The Labour Relations Amendment Act, 1956*, S.O. 1956, c. 35). In 1962, the complementary section providing for the preservation of bargaining rights in the case of "successor employers" was passed and was later expanded so as to preserve existing collective agreements. (*The Labour Relations Amendment Act, 1961-62*, S.O. 1961-62, c. 48; *The Labour Relations Amendment Act, 1970*, S.O. 1970, c. 85.)

The Labour Relations Amendment Act, 1960, S.O. 1960, c. 54, made a number of changes in the Board's role. Most importantly, the Board received the authority to order reinstatement with or without compensation. In conjunction with this new power was the power to designate a field officer to investigate complaints. The Board's reinstatement and compensation orders could be filed in the Supreme Court of Ontario and were enforceable as orders of that Court. The Board also received the power to refer jurisdictional disputes to a new jurisdictional disputes commission which had the power to make interim orders or directions. The Board was given limited power to review the directions. As with the Board's reinstatement and compensation orders, the interim orders could be filed with the Supreme Court and thus become enforceable as orders of that Court. The Board also received the power to set a terminal date for the filing of membership evidence and evidence opposing certification, and the discretion to refuse to "carve out" a craft unit where there was a history of industrial organization in a plant. In 1960 provision was also made for pre-hearing representation votes.

In 1962, *The Labour Relations Amendment Act, 1961-62*, added new provisions to the Act in order to respond to unique problems which were evident in the construction industry. This industry was given a separate but somewhat similar regime under the Act in response to recommendations made in the "Goldenberg Report" (*Report of The Royal Commission on Labour Management Relations in the Construction Industry*, March, 1962). Provision was made for determination of bargaining units by reference to geographic areas rather than particular projects. The Board, in consultation with interested parties, divided the Province geographically for the purpose of certification in the construction industry. Labour policy with regard to the construction industry has continued to evolve. Legislation was introduced in 1977 to provide for province-wide bargaining in the industrial, commercial, and institutional sector of that industry in response to the recommendations contained in the "Franks Report" (*Report of the Industrial Inquiry Commission into Bargaining Patterns in the Construction Industry of Ontario*, May, 1976) (*The Labour Relations Amendment Act, 1977*, S.O. 1977, c. 31). Further amendments were made to the Act in relation to the construction industry in 1979 and 1980. *The Labour Relations Amendment Act, 1979* (No. 2), S.O. 1979, c. 113, and *The Labour Relations Amendment Act, 1980*, S.O. 1980, c. 31, extended the bargaining rights held by trade unions in the construction industry for any particular employer in relation to the industrial, commercial and institutional sector of the industry; prohibited selective strikes and lock-outs; and provided for an expeditious ratification procedure.

In 1970, by virtue of *The Labour Relations Amendment Act, 1970*, the Board received a significant extension to its remedial authority. Provision was made for authorization of a Labour Relations Officer to inquire into certain complaints with a view to settling the matters. The most interesting addition to the situations in which the Board could make remedial orders was in the case of a breach of the newly created "duty of fair representation". This duty, imposed on trade unions, required them not to act in a manner which was arbitrary, discriminatory, or in bad faith in their representation of employees for whom they hold bargaining rights. More recently, this duty has been extended to cover referral of persons to work. The Board also received the power to make "cease and desist" orders with respect to unlawful strikes and lock-outs in the construction industry, which would be filed with the Supreme Court and be enforceable as orders of the Court.

A major increase in the Board's remedial powers under the *Labour Relations Act* occurred 1975. (*The Labour Relations Amendment Act, 1975*, S.O. 1975, c. 76). The Board was permitted to authorize a Labour Relations Officer to inquire into any complaint alleging a violation of the *Labour Relations Act*. A settlement reached by the parties and put into writing was binding on the parties, and a breach of such settlement could be dealt with in the same fashion as a breach of a provision of the Act. The Board's remedial powers were extended to all violations of the Act, and orders of the Board were enforceable in the same way that an order of the Supreme Court is enforceable. The Board also received authority to make "cease and desist" orders with respect to

any unlawful strike or lock-out. It was in 1975 as well, that the Board's jurisdiction was enlarged to enable it to determine grievances in the construction industry referred to it by one of the parties to a collective agreement.

In June of 1980, the *Labour Relations Amendment Act, 1980* (No. 2), S.O. 1980, c. 34, was passed providing for compulsory check-off of union dues and the entitlement of all employees in a bargaining unit to participate in ratification and strike votes. Provision was also made for the Minister of Labour to direct a vote of the employees in a bargaining unit on their employer's final offer at the request of their employer. In June of 1983, the *Labour Relations Amendment Act, 1983*, S.O. 1983, c. 42, became law. It introduced into the Act section 71a, which prohibits strike related misconduct and the engaging of or acting as, a professional strike-breaker. To date the Board has not been called upon to interpret or apply section 71a.

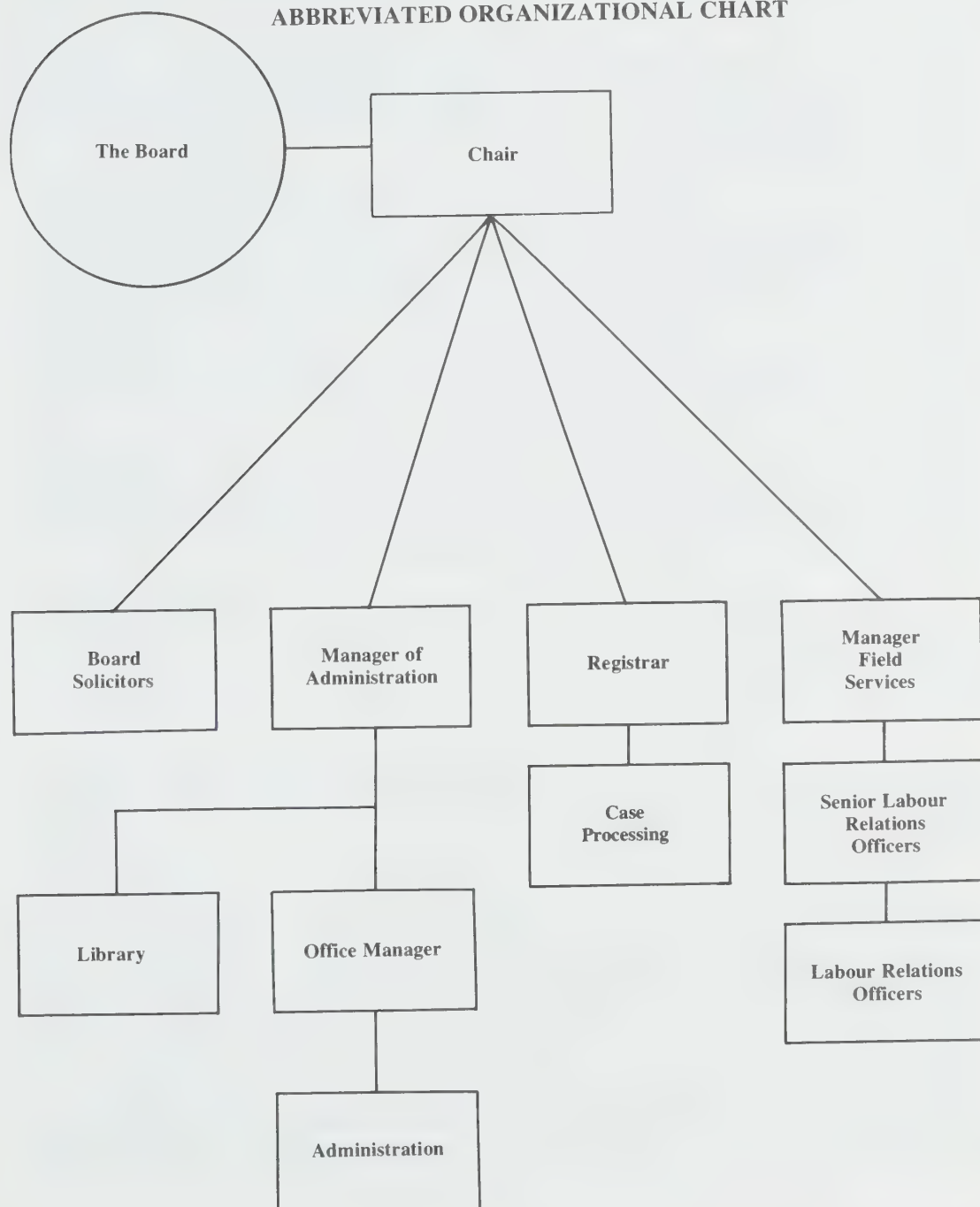
In June of 1984, the *Labour Relations Act, 1984*, S.O. 1984, c. 34 was enacted. This Act dealt with several areas. It gave the Board explicit jurisdiction to deal with illegal picketing or threats of illegal picketing and permits a party affected by illegal picketing to seek relief through the expedited procedures in sections 92 and 135, rather than the more cumbersome process under section 89. The Act also permitted the Board to respond in an expedited fashion to illegal agreements or arrangements which affect the industrial, commercial and institutional sector of the construction industry. It further established an appropriate voting constituency for strike, lock-out and ratification votes in that sector and provided a procedure for complaints relating to voter eligibility to be filed with the Minister of Labour. The new amendment also eliminated the 14 day waiting period before an arbitration award which is not complied with may be filed in court for purposes of enforcement.

In May of 1986, the *Labour Relations Amendment Act, 1986*, S.O. 1986, c. 17 was passed to provide for first contract arbitration. Where negotiations have been unsuccessful, either party can apply to the Board to direct the settlement of a first collective agreement by arbitration. Within strict time limits the Board must determine whether the process of collective bargaining has been unsuccessful due to a number of enumerated grounds. Where a direction has been given, the parties have the option of having the Board arbitrate the settlement.

III BOARD ORGANIZATION

The following is an abbreviated organizational chart of the Ontario Labour Relations Board:

ABBREVIATED ORGANIZATIONAL CHART



THE BOARD

The legislative policy regarding labour relations in the Province of Ontario is set out in the preamble to the *Labour Relations Act*, R.S.O. 1980, c. 228, as follows:

“... it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.”

With this policy as a basis, the Act confers on the Ontario Labour Relations Board the authority over many important aspects of collective bargaining such as certification of trade unions, unfair labour practices, first contract arbitration, unlawful strikes and lock-outs, jurisdictional disputes, and arbitration of grievances in the construction industry. In order to carry out this mandate the Board is composed of a Chair and an Alternate Chair, several Vice-Chairs and a number of Members representative of labour and management respectively in equal numbers. At the end of the fiscal year the Board consisted of the Chair, Alternate Chair, 13 full-time Vice-Chairs, 5 part-time Vice-Chairs and 41 Board Members, 21 full-time and 20 part-time. These appointments were made by the Lieutenant-Governor in Council.

Created by statute, the Ontario Labour Relations Board is best described as a quasi-judicial body, combining as it does, administrative and judicial functions. The Board attempts to avoid being overly technical or legalistic in making its determinations and relies heavily on the efforts of its Labour Relations Officers in encouraging settlements without the need for the formal hearings. The Board strives to keep its procedures informal, expeditious and fair.

The Board, under section 106(1) of the Act, has the exclusive jurisdiction to exercise the powers conferred upon it by or under the Act and to determine all questions of fact or law that arise during any hearing before it. The Board's decisions are not subject to appeal and a privative clause in the statute limits the scope for judicial review. However, the Board has the power to reconsider any of its decisions, either on its own initiative or at the request of an affected party.

The Board has the power to determine its own practices and procedures. The publication entitled *Rules of Procedure, Regulations and Practice Notes* (Queen's Printer, Ontario) contains the established regulations, procedures and practices of the Board. New Practice Notes are published by the Board in its Monthly Report.

The Ontario Labour Relations Board has a somewhat limited role to play with respect to much of the collective bargaining viewed as falling within the public sector. For example, the Board does not have jurisdiction over crown employees, police officers or full-time fire fighters, and has only a limited jurisdiction with respect to teachers in the schools and community colleges in the province. See the *School Boards and Teachers Collective Negotiations Act*, R.S.O. 1980, c. 464 and the *Colleges Collective Bargaining Act*, R.S.O. 1980, c. 74. On the other hand, the Board has full jurisdiction over employees employed by municipalities. A distinct piece of legislation, the *Hospital Labour Disputes Arbitration Act*, stipulates special laws that govern labour relations of hospital employees, particularly with respect to the resolution of collective bargaining disputes and the *Successor Rights (Crown Transfers) Act*, R.S.O. 1980, c. 489 provides for application to the Board where there is a transfer of an undertaking from the crown to an employer and vice versa.

The Board is also given an important role under the *Occupational Health and Safety Act*, R.S.O. 1980, c. 321. A similar jurisdiction is conferred on the Board by section 134b of the *Environmental Protection Act*, R.S.O. 1980, c. 141, proclaimed in November 1983 by S.O. 1983, c. 52, s. 22. From time to time the Board is called upon to determine the impact of the *Canadian Charter of Rights and Freedoms* on the rights of parties under the *Labour Relations Act*.

Apart from its adjudicative function, the Board's operations may be broadly divided into the following areas: (a) Administrative Division, (b) Field Services and (c) Legal Services.

(a) ADMINISTRATIVE DIVISION

The Registrar is responsible for co-ordinating the day-to-day administrative and field operations of the Board. Every application received by the Board enters the system through the Registrar's office. She determines the hearing dates, assures the effective and speedy processing of each case and communicates with the parties in all matters relating to the scheduling of hearings or on particular problems in the processing of any given case.

The Ontario Labour Relations Board is faced with an increasing variety of caseload, and the continuing demands of the parties appearing before it for quick justice. Faced with these conflicting pressures, the ability of the Board to efficiently manage its caseload within the resources allocated to it underpins much of its contribution to labour relations harmony in this province.

The Manager of Administration manages the day-to-day administrative operation while the Manager of Field Services manages the field operations. An Administrative Committee comprised of the Chair, Alternate Chair, Registrar, Deputy Registrar, Manager of Administration, Manager of Field Services and Solicitors meets regularly to discuss all aspects of Board administration and management.

The administrative division of the Board includes: office management, case monitoring, and library services.

1. Office Management

An administrative support staff of approximately 58, headed by an Office Manager who reports to the Manager of Administration and a Senior Clerical Supervisor, process all applications received by the Board.

2. Case Monitoring

The Board continues to rely on its computerized case monitoring system. Data on each case are coded on a day-to-day basis as the status changes. Reports are then issued on a weekly and monthly basis on the progress of each proceeding from the filing of applications or complaints to their final disposition.

By monitoring cases on a day-to-day basis, the Board is able to pinpoint problems and delays and address them quickly. The monitoring system and its reports provide statistical information to senior management that is used as a basis for recommendations regarding improvements or changes in Board practices and procedures which can lead to increased productivity and better service to the community.

3. Library Services

The Ontario Labour Relations Board Library employs a staff of 3, including a full-time manager. The Library staff provides research services for the Board and assists other library users.

The Board Library maintains a collection of approximately 1200 texts, 25 journals and 30 case reports in the areas of industrial relations, labour, contract, evidence, constitutional and administrative law. The library has approximately 4,500 volumes. The collection includes decisions from other jurisdictions, such as the Canada Labour Relations Board, the U.S. National Labor Relations Board and provincial labour boards across Canada.

The Library staff maintains a computer index to the Board's Monthly Report of decisions. It provides access by subject, party names, file number, statutes considered, cases cited, date, etc. It permits Board members and staff prompt and accurate access to previous Board decisions dealing with particular issues under consideration. The Board is the first labour relations tribunal in Canada to develop and implement this type of system. The data base also provides a microfiche index to the decisions. This year the Board is making the index available to the public through Publications Ontario at 880 Bay Street for a cost of \$17.82.

The Library staff has also compiled a manual index to the Bargaining Units certified by the Board since 1980. This index provides access by union name and subject.

(b) FIELD SERVICES

In view of the Board's continuing belief that the interests of parties appearing before it, and labour relations in the province generally, are best served by settlement of disputes by the parties without the need for a formal hearing and adjudication, the Board attempts to make maximum use of its labour relations officers' efforts in this area. Responsibility for the division lies with the Manager of Field Services. In promoting overall efficiency, the manager puts emphasis upon the setting and monitoring of performance standards, case assignments, staff development and maintaining liaison with the Board. He is assisted by three Senior Labour Relations Officers, each of whom is assigned a team of officers. In addition to undertaking their share of the caseload in the field, the Senior Labour Relations Officers are responsible for providing guidance and advice in the handling of particular cases, managing the settlement process on certification days on a rotating basis, and assisting with the performance appraisals of the officers. In addition to the Labour Relations Officers, the Board employs three Returning Waiver Officers. They conduct representation votes directed by the Board, as well as last offer votes directed by the Minister of Labour (see sec. 40 of the Act). They also carry out the Board's programme for waiver of hearings in certification applications.

The Board's field staff continued its excellent record of performance throughout the fiscal year under review. In relation to complaints under the *Labour Relations Act* and the *Occupational Health and Safety Act*, the officers handled a total caseload of 1064 assignments, of which 86.2 percent were settled by the efforts of the officers. The officers handled a total of 872 grievances in the construction industry of which 95.1 percent were settled. Of 525 certification applications dealt with under the waiver of hearings programme, the officers were successful in 399 or 76 percent.

The Alternate Chair of the Board supervises the activities of the field officers, and along with the Manager of Field Services and the Board Solicitors, meets with the officers on a monthly basis to deal with administrative matters and review Board jurisprudence affecting officers' activity and other policy and legal developments relevant to the officers' work.

(c) LEGAL SERVICES

Legal services to the Board are provided by the Solicitors' Office. The office consists of three Board solicitors, who report directly to the Chair. The Board also employs two articling students to assist the solicitors in carrying out the functions of the Solicitors' Office.

The Solicitors' Office is responsible for providing the legal assistance required by the Board in all facets of its operations. The solicitors engage in legal research and provide legal advice to the Chair, Vice-Chair and Board Members in their day-to-day functions. They provide legal opinions to the Board and prepare memoranda relating to the wide variety of legal issues that arise during Board proceedings. The Solicitors' Office is responsible for preparing all of the Board's legal forms and other legal documents required for use by the Board. Board procedures, practices and policies are constantly reviewed by the solicitors. When preparation or revision of practice notes, Board Rules or forms become necessary, the solicitors are responsible for undertaking those tasks.

The solicitors are active in the staff development programme of the Board and the solicitors regularly meet with the Board's field staff to keep them advised of legislative, Board and judicial developments that may affect their day-to-day work. The solicitors are available for consultation by these officers on legal issues that may arise in the course of their work. At regularly scheduled field staff meetings, a solicitor prepares written material for distribution and discussion among the field staff relating to recent decisions of the Board or other tribunals which may affect the discharge of their duties. The solicitors also advise the Board Librarian on the legal research material requirements of the Board and on the library's general acquisition policy.

Another function of the Solicitors' Office is the representation of the Board's interests in court, when matters involving Board proceedings or Board orders become the subject of proceedings in court, as when an application for judicial review of a Board order is filed or an application is made by way of stated case to the Divisional Court. Where outside counsel is retained to represent the Board, a solicitor, in consultation with the Chair, briefs and instructs such counsel on the Board's position in relation to the issues raised by the judicial proceedings. The Solicitors' Office is also responsible for the preparation and compilation of documents that the Board may be required to file with the court in relation to such proceedings.

The Solicitors' Office is responsible for all of the Board's publications. One of the Board's solicitors is the Editor of the Ontario Labour Relations Board Reports, a monthly series of selected Board decisions which commenced publication in 1944. This series is one of the oldest labour board reports in North America. In addition to reporting Board decisions, each issue of the Reports contains a section listing all of the matters disposed of by the Board in the month in question, including the bargaining unit descriptions, results of representation votes and the manner of disposition.

The Solicitors' Office also issues a publication entitled "Monthly Highlights". This publication, which commenced in 1982, contains scope notes of significant decisions of the Board issued during the month and other notices and administrative developments of interest to the labour relations community. This publication is sent free of charge to all subscribers to the Ontario Labour Relations Board Reports. The Solicitors' Office is also responsible for periodically revising the publication entitled "A Guide to the Labour Relations Act", which is an explanation in layman's terms, of the significant provisions of the Act. The latest revision took place in June, 1986, to reflect the amendments to the Act.

MEMBERS OF THE BOARD

At the end of the fiscal year 1988-89, the Board consisted of the following members:

ROSALIE S. ABELLA *Chair*

Rosalie Abella assumed office as Chair of the Board on September 19, 1984. After graduating from University of Toronto Law School in 1970, she practised law until her appointment in 1976 as a judge of the Ontario Provincial Court (Family Division). In addition to carrying out her judicial functions, Rosalie Abella's professional background includes: Member, Ontario Public Service Labour Relations Tribunal, 1975-76; Commissioner, Ontario Human Rights Commission, 1975-80; Member, Premier's Advisory Committee on Confederation, Ontario, 1977-82; Co-Chairman, University of Toronto Academic Discipline Tribunal, 1976-1984; Director, International Commission of Jurists (Canadian Section), 1982 to the present; Director, Canadian Institute for the Administration of Justice, 1983 to the present; Chairman, Report on Access to Legal Services by the Disabled, 1983; Director, The Institute on Public Policy, 1987 to the present; and Maxwell Boulton Visiting Professor at McGill University, 1988-89.

In 1983 Rosalie Abella was appointed as Sole Commissioner, Royal Commission on Equality in Employment. The report of this Commission was submitted to the Federal Government in November of 1984. On March 20, 1989 Rosalie Abella assumed office as Chair of the Ontario Law Reform Commission.

RICHARD (RICK) MacDOWELL *Alternate Chair*

Mr. MacDowell's educational background includes a B.A. (Honours) in Economics from the University of Toronto (1969), an M.Sc. (with Distinction) in Economics from the London School of Economics and Political Science (1970) and an LL.B. from the University of Toronto Law School (1974). He has been associated with the University of Toronto as a lecturer in industrial relations with the Department of Political Economy since 1971 and with the Graduate School of Business since 1976. A former Senior Solicitor of the Board, Mr. MacDowell was appointed to his present position of Vice-Chair in 1979. He is an experienced arbitrator and has served as a fact-finder in school board-teacher negotiations. Mr. MacDowell also has several publications relating to labour relations to his credit. During May-August, 1984, Mr. MacDowell served as the Board's Alternate Chair in an acting capacity.

MICHAEL BENDEL *Vice-Chair*

Mr. Bendel joined the Board as a part-time Vice-Chair in September 1987. He is a graduate of the University of Manchester, England (LL.B., 1966) and the University of Ottawa (LL.B., 1975). Mr. Bendel was a legal officer with the International Labour Office, Geneva, Switzerland, from 1966 to 1969. From 1969 to 1974, he was employed by the Professional Institute of the Public Service of Canada (Ottawa) in various capacities, including in-house counsel and negotiator. Following his call to the Bar of Ontario in 1977, he was appointed professor in the Common Law Section, Faculty of Law, University of Ottawa, where he taught various labour law and other law courses, at the undergraduate and graduate levels, until 1984. In 1984, Mr. Bendel was appointed Deputy Chairman of the Public Service Staff Relations Board (Ottawa), where he was responsible for the interest arbitration function under the *Public Service Staff Relations Act* and where he also acted as grievance arbitrator. Upon resigning from that Board in August 1987, he entered private practice as a labour arbitrator. In addition to his arbitration practice and his part-time Vice-Chair position, Mr. Bendel is currently a part-time member of the Public Service Staff Relations Board. He is the author of several articles on labour law subjects in law journals.

LOUISA M. DAVIE *Vice-Chair*

Ms. Davie was appointed a Vice-Chair of the Board in April 1988. She is a graduate of Wilfrid Laurier University, Waterloo, (B.A. 1977) and the University of Western Ontario (L.L.B. 1980). After her call to the Ontario Bar in 1982, Ms. Davie was a law clerk to the Chief Justice of the High Court of Justice. After her tenure as law clerk she practised labour and employment law with a Toronto law firm until her appointment to the Board. Ms. Davie is a part-time lecturer in the Masters of Business Administration Program, McMaster University, Hamilton, and also acts as an arbitrator.

NIMAL V. DISSANAYAKE *Vice-Chair*

A former Senior Solicitor of the Board, Mr. Dissanayake was appointed a part-time Vice-Chair of the Board in July, 1987. He holds the degrees of LL.B. and LL.M. from Queen's University, Kingston. Having served his period of law articles with the Board Mr. Dissanayake was called to the Ontario Bar in 1980. Prior to joining the Board as a solicitor he taught at the Faculty of Business, McMaster University, Hamilton, as Assistant Professor of Industrial Relations between 1978 and 1980. Since December 1987, he has served as a Vice-Chairman of the Grievance Settlement Board and is also engaged in adjudication as a private arbitrator and referee under the *Employment Standards Act*.

R. A. (RON) FURNESS *Vice-Chair*

Mr. Furness graduated from Imperial College, University of London, with a degree of B.Sc. in Mining Geology in 1957 and worked as a geologist in Newfoundland, Quebec, Ontario and Manitoba until 1960. He obtained his LL.B. degree from Osgoode Hall Law School in 1961, was called to the Bar in 1963 and received his LL.M. from York University in 1968. Mr. Furness first joined the Labour Relations Board as its Solicitor in 1963. He was appointed a Vice-Chair in 1969.

OWEN V. GRAY *Vice-Chair*

Mr. Gray joined the Board as a Vice-Chair in October, 1983. He is a graduate of Queen's University, Kingston (B.Sc. Hons, 1971) and the University of Toronto (LL.B. 1974). After his call to the Ontario Bar in 1976, Mr. Gray practised law with a Toronto law firm until his appointment to the Board. He is also an experienced arbitrator.

ROBERT J. HERMAN *Vice-Chair*

Mr. Herman was appointed a Vice-Chair of the Board in November, 1985, and was at that time a Solicitor for the Board. He is a graduate of the University of Toronto (B.Sc. 1972, LL.B. 1976) and received his LL.M. from Harvard University in 1984. Mr. Herman has taught courses in various areas of law, both at Ryerson Polytechnical Institute and the Faculty of Law, University of Toronto, and also acts as an arbitrator.

ROBERT D. HOWE *Vice-Chair*

Mr. Howe was appointed to the Board as a part-time Vice-Chair in February, 1980 and became a full-time Vice-Chair effective June 1, 1981. He graduated with a LL.B. (gold medallist) from the Faculty of Law, University of Windsor in 1972 and was called to the Bar in 1974. From 1972 to 1977 he was a law professor of the Faculty of Law, University of Windsor. From 1977 until his appointment to the Board, he practised law as an associate of a Windsor law firm while continuing to teach on a part-time basis at the Faculty of Law as a special lecturer in labour law and labour arbitration. Mr. Howe is an experienced arbitrator, referee, fact-finder and mediator. During May-August, 1984, Mr. Howe served as Chairman of the Board in an acting capacity.

PATRICIA HUGHES *Vice-Chair*

Patricia Hughes is a graduate of McMaster University (B.A. Hons., 1970; M.A., 1971) and the University of Toronto (PH.D., 1975, in Political Economy). After teaching political science for four years, Dr. Hughes entered Osgoode Hall Law School and was called to the Ontario Bar in 1984. As counsel in the Policy Development Division of the Ontario Ministry of the Attorney General, she assessed Ontario legislation in light of the requirements of the *Canadian Charter of Rights and Freedoms*. She has researched, lectured and published in Canadian politics, feminist analysis, the Charter of Rights, pay equity and labour relations. Dr. Hughes was first appointed to the Board as a Vice-Chair in April, 1986.

BRIAN KELLER *Vice-Chair*

Mr. Keller joined the Board as a part-time Vice-Chair in September 1988. He is a graduate of Sir George Williams University (B.A., 1968) and the University of Ottawa (L.L. 1971). From 1983 until August 1988 he was a Vice-Chairman of the Canada Labour Relations Board. Mr. Keller currently acts as a private arbitrator and mediator.

PAULA KNOPF *Vice-Chair*

Mrs. Knopf joined the Board as a part-time Vice-Chair in August, 1984. She graduated with a B.A. from the University of Toronto, 1972, and LL.B. from Osgoode Hall Law School, 1975. Upon her call to the Ontario Bar in 1977, she practised law with a Toronto law firm briefly before commencing her own private practice with emphasis in the area of labour relations. A former member of the faculty of Osgoode Hall Law School, Mrs. Knopf is an experienced fact-finder, mediator and arbitrator.

JUDITH McCORMACK *Vice-Chair*

Ms. McCormack was appointed to the Board as a Vice-Chair in 1986. She did her undergraduate work at Simon Fraser University, and graduated with an LL.B. from Osgoode Hall Law School in 1976. Upon her call to the Bar in 1978, she practiced labour law for the next eight years, first with a Toronto law firm and later as an in-house counsel. In 1986 received her LL.M. in labour law from Osgoode Hall Law School. Ms. McCormack is the author of a number of articles on labour relations and has lectured in this area.

KATHLEEN O'NEIL *Vice-Chair*

Ms. O'Neil, a graduate of the University of Toronto (B.A. 1972) and Osgoode Hall Law School (LL.B., 1977) was a Vice-Chair of the Workers' Compensation Appeals Tribunal prior to her appointment to the Board in January, 1988. She has worked as an arbitrator, has had a private practice in nursing and labour relations law, worked as staff lawyer to nurses' and teachers' associations, served as a member of the Ontario Crown Employees Grievance Settlement Board and chaired the justice committee of the National Action Committee on the Status of Women.

KEN PETRYSHEN *Vice-Chair*

Mr. Petryshen was appointed a Vice-Chair in June, 1986. He is a graduate of the University of Saskatchewan, Regina (B.A. Hons., 1972) and Queen's University, Kingston (LL.B. 1976). After articling with the Ontario Labour Relations Board and after his call to the Bar in 1978, Mr. Petryshen practised law as a staff lawyer for the Teamsters Joint Council, No. 52. Prior to his appointment as a Vice-Chair, Mr. Petryshen was a Board Solicitor.

NORMAN B. SATTERFIELD *Vice-Chair*

Mr. Satterfield joined the Labour Relations Board in October, 1975, as a part-time Board Member representing management. In January of 1978 he was appointed a Vice-Chair. Mr. Satterfield holds a B. Comm. degree from the University of British Columbia (1949) and a diploma in Industrial Relations from Queen's University (1954). He was involved in labour relations activities in the brewing, heavy manufacturing and construction industries for over 25 years prior to his appointment as a Vice-Chair.

IAN C.A. SPRINGATE *Vice-Chair*

Mr. Springate was originally appointed a Vice-Chair of the Board in May of 1976. He served as the Board's Alternate Chair from October 1984 to February 1987. He has degrees of B.A. with distinction (Sir George Williams, 1968), M.B.A. (McMaster University, 1970) and LL.B. (Osgoode, 1973). Having served his period of articles with the Ontario Labour Relations Board, Mr. Springate was subsequently called to the Bar with honours and practised law with a Toronto firm that specialized in labour law until his appointment as a Vice-Chair. Mr. Springate taught in the M.B.A. programme at McMaster University on a part-time basis as a special lecturer in industrial relations from 1973 to 1978. From February 1984 to January 1985, he served as Acting Chairman of the Crown Employees Grievance Settlement Board. He has also served as a Board of Inquiry under the *Human Rights Code* and as a Referee under the *Employment Standards Act*. Mr. Springate reverted to part-time Vice-Chair status with the Board in February 1987, and is now engaged primarily as an arbitrator.

INGE M. STAMP *Vice-Chair*

Mrs. Stamp joined the Labour Relations Board in August, 1982 as a full-time Board Member representing management. In September of 1987, she was appointed a Vice-Chair. Mrs. Stamp comes to the Board with many years experience in construction industry labour relations. She also represented the Industrial Contractors Association of Canada during province-wide negotiations as a member of several employer bargaining agencies.

GEORGE T. SURDYKOWSKI *Vice-Chair*

Mr. Surdykowski joined the Board as a Vice-Chair in June, 1986. He is a graduate of the University of Waterloo (B.E.S., 1974) and Osgoode Hall Law School (LL.B. 1980). After his call to the Ontario Bar in 1982, Mr. Surdykowski practised law in Toronto until his appointment to the Board.

SUSAN TACON *Vice-Chair*

Susan Tacon was appointed to the Board as a Vice-Chair, in July 1984. Her educational background includes a B.A. degree (1970) in Political Science from York University and LL.B. (1976) and LL.M. (1978) degrees from Osgoode Hall Law School specializing in the labour relations area. Ms. Tacon taught a seminar in collective bargaining and grievance arbitration at Osgoode Hall Law School for several years and also lectured there in legal research and writing. She has several publications to her credit including a book and articles in law journals and is an experienced arbitrator.

Members Representative of Labour and Management

BROMLEY L. ARMSTRONG

A well-known civil rights leader, Mr. Armstrong was appointed a full-time Member of the Board representing labour in February of 1980. He has held various positions in unions, including local union representative, union steward, plant committee representative and financial secretary. Mr. Armstrong has actively participated in the activities of numerous ethnic and cultural associations, as founding member in many of them. He has been an executive member of the Canadian Civil Liberties Association since 1972 and was a member of the Advisory Council on Multiculturalism in Ontario from 1973 to 1975. Mr. Armstrong was appointed a Commissioner of the Ontario Human Rights Commission in 1975, which post he held until his appointment to the Board. Mr. Armstrong was honoured by the Government of Jamaica when he was appointed a Member of the Order of Distinction in the rank of officer, in the 1983 Independence Day Civil Honours List, and the City of Toronto Award of Merit, March 1984 and the Urban Alliance and Race Relations Award in 1988.

CLIVE A. BALLENTINE

A full-time Member of the Board representing labour since 1979, Mr. Ballentine has been a member of the Bricklayers Union (Local 2) since 1947. During that time he has held various offices in Local 2, including President from 1958 to 1959. In 1964 Mr. Ballentine was elected the Business Agent of Local 2, and in 1968 became the Business Representative of the Toronto Building and Construction Trades Council. In 1974 he assumed the post of Manager and Financial Secretary of the Council and held that position until his appointment to the Board. Mr. Ballentine is also a past executive Member of the Labour Council of Metropolitan Toronto and was its Vice-President between 1975 and 1977. He has served on the Ontario Construction Industry Review Panel and the Ontario Premier's Advisory Committee for an Economic Future.

FRANK C. BURNET

In December, 1983, Mr. Burnet was appointed a part-time Board Member representing management. After graduating from the University of Saskatchewan (B.A. Economics, 1940) Mr. Burnet was engaged in personnel capacities in several corporations in Ontario and Quebec. In 1970 he joined Inco Ltd., as its Director of Industrial Relations responsible for all Canadian Operations. From 1972 until his retirement in 1982, Mr. Burnet held the position of Vice-President Employee Relations, responsible for employee relations activities in Canada, U.S., U.K., and other foreign operations. The many offices Mr. Burnet has held include: Chairman, National Industrial Relations Committee of the Canadian Manufacturers' Association, 1978-81; Governor and Member of the Executive Committee of the Canadian Centre for Occupational Health and Safety, 1982-83; Member of OECD Joint Labour-Management team studying technological change in the U.S. (1963) and incomes policy in the U.K. and Sweden, (1965).

WILLIAM A. CORRELL

A graduate of McMaster University (B.A. 1949), Mr. Correll was appointed in January, 1985, as a part-time Board Member representing management. In January 1988 he was appointed a full-time member of the Board. He joined the Board with an impressive background in the personnel field. Having held responsible personnel positions at Stelco, Atomic Energy of Canada Limited and DeHavilland Aircraft of Canada Limited for a number of years, Mr. Correll joined Inco Limited in 1971. After serving as that company's Assistant Vice-President and Director of Industrial Relations, in 1977 Mr. Correll became Vice-President of Inco Metals Company. He was later appointed Vice-President, Inco Ltd. and retired in 1985. He has lectured on personnel and

management subjects at community college and university level and has conducted seminars for various management groups. He is active as management representative on boards of arbitration and on various management organizations.

KAREN S. DAVIES

Ms. Karen S. Davies was appointed a full-time Board member representing labour in July 1988. She has been a member of the Canadian Auto Workers for many years and has held numerous positions within the union. In 1981 she was elected Chairperson of the Technical Office and Professional Employees bargaining unit. She was responsible for matters such as negotiations, grievances, and arbitrations. Ms. Davies was elected President of Local 673 in 1987, representing technical, office and professional employees of Boeing Canada Ltd., McDonnell Douglas Canada Ltd., Spar Aerospace and Green Shield Prepaid Services. Ms. Davies has also been active in various labour organizations such as the Ontario Federation of Labour and the Labour Community Services of Metropolitan Toronto.

MICHAEL EAYRS

Mr. Eayrs was appointed a part-time Board Member representing management in 1979. Mr. Eayrs has had a long career in personnel and industrial relations with companies in British Columbia, Quebec and Ontario, and the West Indies. The positions he has held include: Director of Labour Relations of the Ontario Federation of Construction Associations; Executive Secretary of the Joint Labour-Management Construction Industry Review Panel; Director of Industrial Relations, Kaiser Canada; Manager of Industrial Relations of the SNC Group; and Executive Director of the Construction Employers Co-ordinating Council of Ontario. Mr. Eayrs is a past Chairman of the National Labour Relations Committee of the Canadian Construction Association, and is presently a vice-chairman of the Joint Labour-Management Construction Industry Advisory Board. He is presently an Adjunct Associate Professor in the Faculty of Engineering of the University of Waterloo, where he lectures in construction industry labour relations.

ANDRE ROLAND FOUCAULT

Mr. Foucault was appointed a part-time Board Member representing labour in January, 1986. A member of the Canadian Paper Workers Union since 1967, he has held several elected positions within that union, including that of first Vice-President. In February 1982, Mr. Foucault joined the staff of the Canadian Paperworkers Union as a National Representative. In 1976 he was appointed to the position of Programmes Co-ordinator of the Ontario Federation of Labour.

W. NEIL FRASER

Prior to being appointed a full-time Board Member representing management on January 1, 1988, Mr. Fraser was executive director of the Canadian, Ontario and Metro Toronto Masonry Contractors Associations. He served as employer spokesman in province-wide collective bargaining for the Bricklayer and Mason Tender Agreements. He represented the masonry industry on a number of technical committees for building code and technical standards. He is a past president, Toronto Chapter Institute of Association Executives, and biographee since 1982 in Who's Who in America.

WILLIAM GIBSON

Prior to being appointed a full-time Board Member representing management in November 1987, Mr. Gibson was Vice-President Industrial Relations for Robert-McAlpine Ltd., a position he had held since 1976. From 1946 to 1976 Mr. Gibson held various other administrative positions in the McAlpine group of companies. He has been Chairman or President of many major Contractors Associations, through which he has been actively involved in the negotiation and administration of collective agreements at the local, provincial and national levels. He was a part-time Board Member representing management from 1978-1984.

PAT V. GRASSO

Appointed a part-time member of the Board representing labour in December, 1982, Mr. Grasso has been active in the labour movement in Ontario for many years. Having held various offices in District 50 of the United Mine Workers of America, he was appointed Staff Representative in 1958, and Assistant to the Regional Director for Ontario in 1965. In 1969, Mr. Grasso became the Regional Director for Ontario and was elected to the International Executive Board. When District 50 merged with the United Steelworkers of America in 1972, he became Staff Representative of the Steelworkers in charge of organizing in the Toronto area. In January 1982, Mr. Grasso was transferred to the District office and appointed District Representative directing the Union's organizing efforts in Ontario. In June 1988 he was appointed a full-time member of the Board.

ALBERT HERSHKOVITZ

Prior to being appointed a part-time Board Member representing labour in September, 1986, Mr. Hershkovitz served as business agent for the Fur, Leather, Shoe and Allied Workers' Union and the Amalgamated Meat Cutters and Butcher Workmen. He has been President of the Ontario Council-Canadian Food and Allied Workers, Vice-President of the Ontario Federation of Labour and Chairman of the Metro Labour Council, Municipal Committee. As well as being Chairman of the Ontario Jewish Labour Committee and Vice-Chairman of the Urban Alliance for Race Relations, Mr. Hershkovitz has served as a member of the Board of Referees of the Unemployment Insurance Commission.

MAXINE A. JONES

A community college teacher of English and Political Science, Ms. Jones was appointed a part-time Board Member representing labour in April 1987. Ms. Jones holds Bachelor degrees in Journalism and Political Science, a graduate degree in the latter, and has completed all but her dissertation for her doctorate. Her union experience is extensive and includes being the most senior member of the Ontario Public Service Union's Provincial Board. In addition, she has extensive grievance arbitration experience in her home city, Windsor. Also in Windsor, Ms. Jones is a member of a number of community agency boards, including the Windsor Occupational Safety and Health Board, and has served in several City Council appointed positions.

JOSEPH F. KENNEDY

Mr. Kennedy is the Business Manager of the International Union of Operating Engineers, Local 793, having served as Treasurer before becoming Business Manager. He has been instrumental in establishing a compulsory training program for hoisting engineers in the Province of Ontario. Mr. Kennedy is a Trustee for the Pension and Benefit Plans of Local 793, as well as a Trustee for the General Pension Plan of the International Union of Operating Engineers in Washington, D.C. He is a member of the National Safety Council, Chicago, Illinois, a member of the Construction Industry Advisory Board for the Province of Ontario, a Director of the Ontario

Building Industry Development Board and, since May, 1983, he has been a part-time member of the Ontario Labour Relations Board representing labour.

HANK KOBRYN

A member of the Iron Workers' Union since 1948, Mr. Kobryn was the President of Local 700 of that Union from 1951 to 1953. Thereafter, for 16 years, Mr. Kobryn held the post of Business Agent of the Iron Workers' Local 700 in Windsor. Among the many other offices Mr. Kobryn has held are: Vice-President of the Provincial Building and Construction Trades Council of Ontario 1958-1962; Secretary Treasurer of the same council, 1962-1980; Member of the Labour-Management Provincial Safety Committee; Member of the Labour-Management Arbitration Commission; Member of the Construction Industry Review Panel; and member of the Advisory Council on Occupational Health and Safety. In December, 1980, Mr. Kobryn was appointed a full-time Board Member representing labour.

JOHN KURCHAK

In February 1989 Mr. Kurchak was appointed a part-time Board Member representing labour. A member of the Sheet Metal Workers' International Association for many years, he held the positions of business agent and business manager for Local 285. Mr. Kurchak was also a business representative on the Toronto-Central Building and Construction Trades Council for five years. He has been a member of the Conservation, Energy and Pollution Control Committee of the Ontario Federation of Labour.

JAMES LEAR

Prior to his appointment in October 1988 as a part-time Board member, Jim Lear was a Corporate Manager with the George Wimpey Canada Group, responsible for salaried personnel employment practices and benefits, insurances, construction equipment transport acquisitions and disposals, and all administrative systems and procedures throughout the Canadian divisions and construction projects of the company. He is a past president of the Construction Safety Association of Ontario, and a former member of the Policy Review Board of Workers Compensation Board of Ontario.

DONALD A. MACDONALD

Prior to being appointed a full-time Board Member representing management in July, 1986, Mr. MacDonald was active in personnel management at Brown & Root Ltd. from 1957 to 1968 and at Lummus Canada from 1968-1981. From 1981 until his appointment at the Board, Mr. MacDonald was President of the Boilermaker Contractors' Association where he was responsible for negotiations, contract administration and liaison with other trade associations. Other activities include Chairman of the Industrial Contractors Association National Committee and Director of the Electrical Power Systems Construction Association.

WILLIAM JOHN (JACK) MCCARRON

Apprenticed in the plumbing trade commencing in 1947, Mr. McCarron currently holds a certificate of Qualification Plumber, Certificate of Qualification Steamfitter and Master Plumber License. He worked for English & Mould Mechanical Contractor for fourteen years, eight years as Contracts Manager and Vice-President. He is currently working for the Mechanical Contractors Association of Toronto as its Labour Relations Director, a post held for fifteen years. He is a member of many construction management organizations and also has been the chairman of provincial bargaining for the Mechanical Contractors Association of Ontario since 1980. He has

been re-elected for the 1990 round of bargaining. Mr. McCarron was appointed a part-time Board member representing management in February 1989.

CAROLINE M. (CURRIE) MCDONALD

Ms. McDonald was appointed a full-time Board Member representing labour in July, 1988. Ms. McDonald came to the Board with many years in the labour relations field, primarily with the Retail, Wholesale Department Store Union. Most recently she was the union's business agent for Eastern Ontario, through which she was responsible for the handling of grievances, arbitrations, contract negotiations and labour disputes. Ms. McDonald was Organizer Co-ordinator of the Department Store Organizing Campaigns, where she was responsible for labour relations matters relevant to organizing in Ontario. Ms. McDonald has been active in the Ontario Federation of Labour and the Metropolitan Toronto and Eastern Ontario Labour Council.

ROBERT D. McMURDO

Since April of 1984, Mr. McMurdo has served as a part-time Board Member representing management. An honours graduate in business administration (1953) from the University of Western Ontario, Mr. McMurdo has held many industry related offices including: President of the London & District Construction Association, President of the Construction Safety Association of Ontario and President of the Ontario General Contractors Association. He is the President of McKay-Cocker Construction Limited and McKay-Cocker Structures Limited of London and is currently a member of the Ministry of Labour Construction Industry Advisory Board.

TERRY MEAGHER

Mr. Meagher was appointed a part-time Board Member representing labour in October, 1985. From 1970 to 1984, Mr. Meagher served as Secretary Treasurer of the Ontario Federation of Labour. Prior to that he has held the positions of Business Agent, Local 280 of the Beverage Dispensers and Bartenders Union and Executive Secretary to the Labour Council of Metropolitan Toronto. He has also served as Vice-Chairman of the Canadian Labour Congress, Human Rights Committee and member of the Canadian Labour Congress International Affairs Committee.

RENE R. MONTAGUE

In March of 1986 Mr. Montague was appointed a full-time Board Member representing labour. A member of the United Auto Workers for many years, Mr. Montague maintained many responsible positions in the union, including plant chairperson of Northern Telecom. He has extensive arbitration and bargaining experience. In 1985 Mr. Montague was elected to the Executive Committee of the United Way of Greater London and was a member of the Board of Directors and Campaign Committee of the United Way.

JOHN W. MURRAY

In August of 1981, Mr. Murray was appointed as a part-time member of the Board representing management. Mr. Murray earned a B.A. degree in Maths and Physics as well as an M.A. degree from the University of Western Ontario. Having served as a Lieutenant with the Royal Canadian Navy during the Second World War, he commenced a career in sales in 1946. He joined the Purchasing Department of John Labatt Ltd. in 1956, becoming Director of Purchasing in 1957. He subsequently held a number of Senior Management positions in the Labatt Group of companies in several parts of the country. He was a vice-president of Labatt Brewing Company for several years before his retirement in January 1982.

WILLIAM S. O'NEILL

In March, 1986 Mr. O'Neill was appointed a part-time Board Member representing management. Since 1969 Mr. O'Neill has held many responsible positions with Ontario Hydro, including Senior Construction Labour Relations Officer and Manager of Construction Labour Relations. He is a past Secretary-Treasurer of the Electrical Power Systems Construction Association and is currently its General Manager. He is also a director at large of the Construction Owners Council of Ontario.

DAVID A. PATTERSON

Mr. Patterson was appointed a full-time Board Member representing labour in April, 1986. A member of the United Steelworkers of America for many years, he was elected President of Local 6500 in 1976 and re-elected 1979 and 1981. In 1981 Mr. Patterson ran and was elected Director, District 6 of the United Steelworkers of America. He served in that position until March 1986. He was elected Vice-President at large at the 1982 CLC convention and re-elected to that position in 1984. He has served as Chairman of the Safety and Health Convention Committee (CLC) as well as a member of the Board of Directors of the Mine Accident Prevention Association of Ontario. He was a member of the Ontario Labour Management Study Group.

HUGH PEACOCK

Mr. Peacock was appointed a full-time Board Member representing labour in November, 1986. Prior to joining the Board Mr. Peacock was Legislative Representative for the Ontario Federation of Labour which enabled him to gain broad knowledge of the legislative and political process in Ontario as well as its labour relations system. He came to the OFL after having been the Woodworkers' Education and Research Representative (1960-1961), worked in the UAW Canada Research Department (1962-1967), and having been a negotiator for the Toronto Newspaper Guild (1972-1976). Mr. Peacock was a member of the Ontario Parliament, representing Windsor West (NDP) from 1967 to 1971. He is currently a member of various social and community organizations.

ROSS W. PIRRIE

Mr. Pirrie was appointed a part-time Board Member representing management in January, 1985 and a full-time Board Member in May 1988. Having been employed by Canadian National Railways for ten years, in 1960 he joined Shell Canada Limited. At Shell Canada, Mr. Pirrie held a wide range of managerial positions in general management, occupational health, human resources and on retiring in 1984 was corporate manager of labour relations. Mr. Pirrie holds the degree of B.A. (Psychology) from the University of Toronto.

JOHN REDSHAW

Mr. Redshaw was appointed a full-time Board Member representing labour in July, 1986. From 1966 to 1971 he served as business representative for Local 793, International Union of Operating Engineers. He was area supervisor for Hamilton, St. Catharines and Kitchener, a position which included organizing and negotiation of all collective agreements in the construction industry. From 1979 until his appointment to the Board Mr. Redshaw worked in the Union's Labour Relations Department, first in Toronto and then Cambridge. He has been Secretary-Treasurer of the Canadian Conference of Operating Engineers and Secretary of the Waterloo, Wellington, Dufferin, Grey, Building Trades Council.

KENNETH V. ROGERS

Mr. Rogers was appointed in August, 1984, as a part-time Board Member representing labour. From 1967 to 1976, he was a representative with the International Chemical Workers Union and served as Secretary-Treasurer of the Canadian Chemical Workers Union from 1976 to 1980. When the Energy and Chemical Workers Union was founded in 1980, Mr. Rogers became its Ontario Co-ordinator and remained in the position until 1988. He is a former Vice-President of the Ontario Federation of Labour. Mr. Rogers is currently employed as Director of Regional Sectoral Services with the Workers Health and Safety Centre.

JAMES A. RONSON

Mr. Ronson was appointed a full-time Member of the Board representing management in August of 1979. He graduated from the University of Toronto with a B.A.Sc. in 1965 and an LL.B. in 1968. After his call to the Bar, Mr. Ronson practised law in Toronto. During his practice he served on numerous boards of arbitration as employer nominee.

MICHAEL A. ROSS

Mr. Ross was appointed as a part-time Board Member on the labour side in February, 1980. Mr. Ross, who has studied economics and political science at Laurentian University, has been the Business Manager of the Labourers' International Union of North America, Local 493 for the past 12 years. He has held the position of Secretary of the Sudbury and District Building & Construction Trades Council for four years and has been President of the Council for two years. He is presently serving his second four-year term as Vice-President of the Ontario District Council of the Labourers' Union and is in his second year as a Director on the Board of the Sudbury Regional Development Corporation.

MARY ROZENBERG

Ms. Rozenberg was appointed a full-time Board Member representing management in May 1988. She joins the Board with an extensive background in the labour relations field which includes advising senior levels of management on labour relations matters; negotiating collective agreements; the interpretation, application and administration of various collective agreements; the research, preparation and presentation of grievances at arbitration; and designing, implementing and teaching labour relations programs in grievance handling, arbitration, discipline, attendance, management and labour relations for supervisors.

JUDITH A. RUNDLE

Ms. Rundle was appointed a full-time Board Member representing management in July, 1986. She joined the Board with an impressive background in the personnel field. After the University of Toronto, Ms. Rundle held responsible personnel positions at Toronto General Hospital and National Trust Company. Ms. Rundle joined the Riverdale Hospital in 1979, first as Assistant to the Director of Personnel and subsequently as Assistant Administrator of Human Resources. From January 1986 until her arrival at the Board, Ms. Rundle was employed as Acting Director of Personnel and Labour Relations at Toronto General Hospital. She was active as management representative on boards of arbitration and has been a member of various management organizations.

GORDON O. SHAMANSKI

A graduate of the University of Chicago (B.A.), Mr. Shamanski was appointed a full-time Board Member representing management in July, 1986. He joined the Board with an impressive

background in the personnel field, having been Personnel Manager at Rothmans of Pall Mall Canada Ltd., 1963-1970, and at Canadian Motor Industries Holdings Limited, 1970-1971. From 1972 to 1985 Mr. Shamanski was Corporate Director of Personnel and Industrial Relations at Domglas Inc. where he was responsible for labour contract negotiations, labour board hearings, compensation and benefits design, health and safety, management development and training, and staff recruitment. He has lectured in industrial relations and is a member of various management organizations.

ROBERT M. SLOAN

Prior to being appointed a full-time Board Member representing management in November, 1986, Mr. Sloan was employed by Alcan as Corporate Industrial Relations Manager and Occupational Health and Safety Co-ordinator. In this capacity Mr. Sloan, a graduate of Sir George Williams University (B.A.) was directly involved in all phases of the personnel and labour relations scene including representation in various management organizations.

E.G. (TED) THEOBALD

Mr. Theobald was appointed as a part-time Board Member representing labour in December, 1982. From 1976 to June, 1982, he was an elected member of the Board of Directors of O.P.S.E.U., and during this period served a term as Vice-President. A long time political and union activist, Mr. Theobald has served as President and Chief Steward of a 600 member local union. He has served on numerous union committees and has either drafted or directly contributed to several labour relations related reports. He is experienced in grievance procedure and arbitration.

JANET TRIM

Appointed a part-time Board Member representing management in May, 1987, Ms. Trim comes to the Board with many years of experience in construction labour relations. Representing the General Contractors, she has been a member of negotiating committees formed to bargain provincial collective agreements. She had also served for several years as a management trustee on a Welfare and Pension Trust Fund.

STEVE WESLAK

Mr. Steve Weslak was appointed a part-time Board Member representing labour in September, 1988. A member of the International Brotherhood of Electrical Workers for over 40 years, he has served on various boards and committees. He was a member of the Executive Board of Local 353 for 12 years, and served for 3 years as the Board's Chairman. In 1965 Mr. Weslak was hired as an organizer for the IBEW, and he later served as Assistant Business Manager and then as Financial Secretary before his retirement in 1981. He also served on a provincial apprenticeship advisory board for 4 years.

W.H. (BILL) WIGHTMAN

Mr. Wightman was first appointed to the Board in 1968, becoming a full-time member in 1977, and resigned from the Board in April 1979, in order to serve as a member of the 31st Parliament of Canada and Parliamentary Secretary to the Minister of Labour. He was re-appointed as a full-time Board Member representing management in May, 1981. Following 12 years as an industrial relations specialist in the petro-chemical, food processing and health care industries in the U.S. and Canada, he became Director of Industrial Relations for the Canadian Manufacturers' Association from 1966 to 1977. Concurrently, he served as the Canadian Employer Delegate and Technical Advisor to the International Labour Organization in Geneva and the

Organization for Economic Co-operation and Development in Paris, and as a member of the Canada Manpower and Immigration Council, the Unemployment Insurance Advisory Committee and the Attorney-General's Committee on Prison Industries. He is a graduate of Clarkson University (BBA '50) and Columbia University (MS '54).

NORMAN A. WILSON

Mr. Wilson was appointed a part-time Board Member representing labour in 1979. A member of Local 721 of the Iron Workers since 1949, he became its Business Agent in 1955. Later, in 1958, he was appointed General Organizer for the International Union, covering Quebec and the Maritime Provinces. Eventually this assignment was enlarged to include the western provinces and Ontario. In 1968, Mr. Wilson became the Executive Director of the Canadian Operations of the Union. Mr. Wilson has been an active participant in a number of Provincial Building Trade Councils. He participated in the formation of, and later became a member of, the Construction Industry Review Panel of Ontario and has acted as Co-Chairman of that Panel.

DANIEL WOZNIAK

Mr. Wozniak was appointed a part-time Board Member representing management in March, 1987. A graduate of the University of Manitoba (B.A.) and the Manitoba Law School (LL.B.), Mr. Wozniak has held various personnel-related positions. He started his business career with DuPont of Canada Ltd. where he held various positions in the employee relations department. In 1960, he joined Standard Brands Limited (now known as Nabisco Brands Ltd.) in Montreal and was promoted to the position of Vice-President, Personnel and Industrial Relations. In 1976 he joined Canada Wire and Cable Ltd. in Toronto where he held the position of Vice-President, Personnel and Industrial Relations until his retirement in 1987. A member of various management organizations, Mr. Wozniak served as the Deputy Employer's representative to the 72nd ILO Convention in Geneva (1986).

V HIGHLIGHTS OF BOARD DECISIONS

Employees regularly working both at the construction site and in the shop falling within the construction bargaining unit

This was a section 144(1) application for certification relating to the industrial, commercial and institutional sector of the construction industry. The Operating Engineers Union challenged the inclusion of certain employees in the bargaining unit, on the grounds they were not employed in the bargaining unit on the date of application. Those two employees worked in a shop. On the day of application one employee was working on the construction site but the other was working in the shop. The Board, citing *J & M Chartrand Realty Limited*, [1978] OLRB Rep. May 423, wrote that generally employees engaged in repair work come within the applicant's bargaining unit if they are working at a construction site and not within a shop. However, the Board observed that the *J & M Chartrand* decision had made no reference to section 117(b), which defines "employee" (for purposes of the construction industry) to include one "engaged in whole or in part in offsite work but who is commonly associated in his work or bargaining with onsite employees". The Board noted that both employees were primarily engaged in the repair and maintenance of the construction equipment operated by the other employees in the bargaining unit. Both were often dispatched to construction sites to perform repair work on the equipment. As well, it did not appear that the respondent operated a repair shop employing others besides the mechanics who were regularly and routinely dispatched to the construction sites. The Board concluded that both employees were commonly associated in their work with onsite employees, and thus both were also employees in the bargaining unit. *Bill Brownlee Excavating Limited*, [1988] OLRB Rep. Apr. 364.

Applicant in pre-hearing representation vote application entitled upon timely request to obtain and keep copy of employee lists filed by employer

In this application for certification the Board directed the taking of a pre-hearing representation vote and responded to the union's request that it be permitted to keep a copy of the employee list filed by the employer. By the time the matter came on for hearing, the parties had agreed on the list for the purpose of the count and on the voters list and there were no longer any issues outstanding requiring the union's access to the employee list. In the circumstances, the Board refused to accede to the union's request. Instead, it directed that a copy of the voters list be sent to the applicant. The Board indicated, however, that in the normal course of events it would have directed that the union be permitted to keep a copy of the employee list. In this regard, the Board went on to review its approach to the question of a union's access to employee lists.

The respondent's position was that to permit the union to review the list other than in the presence of a Labour Relations Officer would reflect a "new Board policy" hitherto unrevealed. The Board countered this assertion by referring to two cases, *Airline Limousine*, [1985] OLRB Rep. Jan. 1 and *Metropolitan Separate School Board*, [1986] OLRB Rep. Dec. 1733, where the Board required disclosure of the list to the union without the presence of an Officer. The Board agreed with the analysis in those cases that principles of natural justice and considerations relating to the efficiency of the certification process can lead the Board to require disclosure of the list to the union without the presence of an Officer. The Board observed that the employee list is a pleading containing facts which may be disputed by the union. As each party has a right to information relevant to the issues in dispute or potentially in dispute, the union is entitled to receive

and to keep a copy of the employee list provided it requests it in a timely fashion. The Board noted further that both the public and the parties have an interest in the speedy statement and resolution of matters in dispute in a certification application. Thus, in pre-hearing representation vote applications, the applicant who requests a copy of the employee list should be provided with one at the outset of the pre-hearing meeting with the Officer and be permitted to determine on its own time whether it wishes to make challenges to the list.

While the Board will always have the jurisdiction to determine whether, on the facts of a particular case, the employee lists should not be given to the union, it will be the exceptional case, if any, in which they should not be given where a timely request is made. *Kitchener-Waterloo Hospital*, [1988] OLRB Rep. April 406.

All examinations of an individual's duties and responsibilities to be comprehensive

In this application under section 106(2) for a determination as to whether a certain individual was an employee within the meaning of the Act, the applicant employer argued that the Board practice of restricting its inquiry in certain circumstances to "changes" in the duties and responsibilities of the individual in dispute was not permitted. The respondent trade union took the view that the practice should continue because once a person's status has been determined the applicant bore a substantial onus to show that the circumstances had changed sufficiently to warrant a different conclusion as to employee status.

The Board reviewed its jurisprudence on the scope of the examination. In respect of applications during the term of the collective agreement, the examinations are normally restricted to 'changes' in duties and responsibilities since the commencement of the collective agreement unless the position is a new one or unless the applicant raised the matter in negotiations. In these instances, the examination will not be so restricted. An examination, however, will also be restricted to "changes" in respect of applications brought during the first set of negotiations following the parties' agreement as to the status of the individuals now in dispute. These rules involved the application of estoppel principles to restrict subsequent litigation of an individual's status. The Board held that a preferable rule is to order a full duties and responsibilities examination where the Board is satisfied that a "question" has arisen as to the status of an individual. The majority explained that section 106(2) permits an application during negotiations *and* during the currency of a collective agreement and appears to make no distinction between those time periods with respect to the treatment of an application. Another reason was that the parties are not to be deprived, through recourse to an equitable principle, from coming to the Board for an adjudication on the merits in respect of a matter specifically and exclusively within the Board's statutory authority. It was reaffirmed, however, that the question of changes does continue to be a factor, in that the status quo and any changes thereto are matters of evidence.

The Board set out new rules for preparing an application. The applicant must indicate the name of the individual(s) in dispute and also the basis for the application. That is, the applicant must state the nature of the position, including duties and responsibilities (to the extent known, where the applicant is a trade union), the historical dimension to the position (if any) including any Board determinations and parties' agreements and how the mischief against which sections 1(3)(b) or 12 are directed has arisen or has ceased. The respondent must outline fully any grounds it asserts as to why the Board should not entertain evidence as to the duties and responsibilities of the person(s) in dispute. Where the individual's status has not been previously determined by the Board in a certification or earlier 106(2) application or by specific agreement of the parties, an examination will generally be directed. Where the Board has previously determined the status of a person in a certification application or prior section 106(2) application or where the parties have reached a specific agreement as to the person's status, the Board will not permit evidence as to the

person's duties and responsibilities to be adduced before a Board Officer unless the Board is satisfied, on the face of the application, that it appears the mischief against which section 1(3)(b) or section 12 is directed has arisen or has ceased. Where the Board is not so satisfied, the application may be dismissed without a hearing. *The Windsor Star*, [1988] OLRB Rep. April 427.

Layoffs eliminating unit but part of large scale re-organization held not to be an unfair labour practice

This case involved layoffs which effectively eliminated the bargaining units represented by the complainant, the Ontario Nurses' Association (ONA). ONA represented 5 to 6 nurses at a retirement lodge. ONA asserted that the employer had breached its duty to bargain in good faith, because it had not notified the union in advance, and had not bargained about the decision to lay off employees. The union further asserted that the layoff was an unfair labour practice, motivated in whole or in part by the fact that those nurses had opted to join ONA and engage in collective bargaining. ONA maintained that the layoff also constituted an unlawful lockout. Finally, ONA argued that the employer had contravened the "statutory freeze" of employment conditions. ONA relied on sections 3, 15, 64, 66, 70, 72, 75, 76, and 79. After protracted negotiations first collective agreements for the two bargaining units had been signed. The layoffs followed within weeks. However, the layoffs were but a small part of major changes in the operations of a large company, which employed several hundred workers. The company had launched a series of initiatives to implement a "wellness concept", that is, to create a private residential setting, de-emphasizing those aspects of the environment which had an institutional or hospital connotation, or involved the symbols of sickness. An additional reason for the layoffs was a sharp drop in operating income. This economising eventually resulted in the layoff of all 70 nurses in all 13 retirement lodges, together with a realignment of functions and a reduction of staff or hours for many other employees in the division. The Board found that there was no evidence that such action was aimed at undermining ONA's bargaining rights in London and that it was highly improbable that Central Park Lodges would eliminate 70 nursing positions in 13 lodges, and alter the duties or hours of work of dozens of other employees, in order to camouflage an anti-union attack on 5 or 6 nurses. For these reasons the Board concluded the company's decision was not motivated in whole or in part by anti-union considerations. The Board rejected the claim of an unlawful lockout for the same reasons and because the employer had showed no signs of attempting to exact concessions from the union.

Concerning the allegation of a breach of the duty to bargain in good faith, the Board noted that although staff changes to implement the "wellness concept" were being considered by management during the bargaining period, the two contracts had been signed in advance of the decision to lay off the nurses. Therefore there was no violation of section 15, nor of the section 79 "statutory freeze". An additional reason for dismissal of the section 15 complaint was the finding that the staff reorganization plan was not a reaction to the collective bargaining situation of the ONA nurses. *Central Park Lodges*, [1988] OLRB Rep. May 454.

Board has jurisdiction and duty to consider Charter issues because it is a "court of competent jurisdiction"

In this certification case, there were two major issues: one was whether the employees were persons employed in agriculture, who under section 2(b) are excluded from the *Labour Relations Act*. The second question was whether the Board had jurisdiction to entertain a Charter challenge to section 2(b).

The Board found the workers were agricultural. They worked in a hatchery and were responsible for monitoring the development of embryonic chickens and otherwise caring for the eggs

during incubation and for certain aspects of the hatched chickens. The union argued that the factory-like conditions - set shifts, year-round employment, benefits and disciplinary provisions similar to those in a factory and the technological sophistication - made the nature of the employees' work non-agricultural. The Board accepted these facts but held that it was the nature of the activities and not the way they were performed that was relevant.

The Charter issues were twofold. One, was the Board a "court of competent jurisdiction" within the meaning of section 24 of the *Canadian Charter of Rights and Freedoms*, and, therefore, competent to hear Charter challenges and grant remedies for a violation of the Charter? In the Board's view the Ontario Court of Appeal regarded as still undecided the issue of whether administrative tribunals can be "courts of competent jurisdiction". The Board reviewed several Board and court decisions and deduced that the cases which find that a particular adjudicative body has jurisdiction under subsection 24(1) of the Charter and those which do not so find can be distinguished on the basis of the powers of the particular forum in issue and of the nature of the remedy requested. Turning next to the Ontario Labour Relations Board in particular, the Board noted that the combined effect of section 106 (which confers on the Board jurisdiction to determine all questions of law that arise in any matter before it) and section 108 (the privative clause) is to give the Board exclusive jurisdiction to deal with all matters arising under the Act. Thus where Charter issues arise and the remedy requested is one which the Board can already grant, "considerations of convenience, economy and time" indicate that the Board has jurisdiction to and should entertain those Charter issues. The Board saw the issue as being whether, when the applicant has challenged the exemption under the Charter, the Board is required to dismiss the application and the applicant compelled to make an application to the Supreme Court of Ontario for a declaration that the exemption contravenes the Charter. If the applicant were successful, it would then have to return to the Board and request that the Board hear the application for certification, because the Court cannot grant certification, the remedy actually sought by the union. The Board noted that such was the case in *Moore v. The Queen in Right of B.C.*, (1988) 50 D.L.R. (4th) 29. There the B.C. Court of appeal held that a declaration by a court would be "unwarranted interference ... in a labour relations matter". It was argued that the Board does not have jurisdiction because it would not have jurisdiction over the persons or subject matter of the application if it were to find that the employees who are the subject of the certification application were employed in agriculture. In the Board's view, since the applicant was not the workers but rather the union, the application was properly before the Board.

The second question was whether the Board was permitted or required to apply the Charter on the basis of section 52 of the Charter, which declares that any law inconsistent with the Charter is to the extent of the inconsistency of "no force or effect". The Board held that there was such a requirement, citing the Supreme Court of Canada decision in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295. *Cuddy Chicks Limited*, [1988] OLRB Rep. May 468.

Negotiating for a reduced mandatory retirement age may not violate duty of fair representation

This was a section 68 (duty of fair representation) case. The complainant alleged that the union had, in negotiating a reduction in the mandatory retirement age from 70 to 65, violated its section 68 duty. The age limit was said to be discriminatory in that it affected only Ontario workers since it would not be enforceable under Quebec law. At the Canadian Auto Workers National Union Collective Bargaining Convention preceding the negotiations the delegates had agreed that inflation protection for retirees would be a high priority, and in bargaining such had indeed been a major platform. Because this would mean less money would be available for wages and benefits, the union bargained for improved job security (by way of the reduced retirement age) in order to induce younger workers to accept the contract.

The Board held that the discrimination prohibited by section 68 must be understood as the antithesis of fairness. A union cannot accommodate every concern of each employee consistently; therefore section 68 requires only that all relevant interests be weighed and the union make an honest judgment in the circumstances. In the instant case the union had weighed the right to work until an older age against the right to greater economic security after retirement at whatever age, and chose, on balance, to protect its members from the financial repercussions of a fragile pension on retirement. In so doing, it was neither arbitrary, discriminatory, nor acting in bad faith. The complaint was dismissed. *Leopold Morin*, [1988] OLRB Rep. May 506.

Board dismisses objections of employees who missed representation vote because they ignored Board notices

In this case, an application for a declaration terminating bargaining rights, three employees had claimed they had not been given a reasonable opportunity to vote. A date had been chosen for a vote (January 26, 1988). As usual, an alternate date was also chosen as a precautionary measure (January 28, 1988). The Board notices, Form 69-Notice of Taking of Vote, clearly stated that the vote would be held on January 26. The objecting employees admitted that they saw the notices and may even have read parts of them. Yet they claimed that they did not pay attention to the Board notices because they relied on a letter that they had received from the employer. That letter set out both the "Date of Vote" and "Alternate Date". The employees indicated that upon reading the letter, they understood that they would have an opportunity to vote on either January 26 or January 28 and that since they were not scheduled to work on the 26th they had planned to vote on the 28th. However, as planned, the vote was concluded on January 26. The employees argued that they had been misled and unfairly denied their right to vote. The Board held that an employee has an obligation to read the Board's official notices and anyone who elects not to pay attention to these notices does so at his or her own peril. The Board declined to nullify the vote. *Cable Tech Co. Ltd.*, [1988] OLRB Rep. June 562.

One-employer declaration not granted where union seeks thereby to extend general contractor's sub-contracting obligations to construction project owner

In this case Dalton Engineering and Construction Limited ('Dalton'), a general contractor, was building a new automobile showroom and doing certain other work for Rumble Pontiac Buick (1985) Inc. ('Rumble'), the owner. Dalton was bound by the Labourers Provincial Agreement, which requires general contractors to engage only those sub-contractors who are 'in contractual relations' with the union or its sister affiliated bargaining agents. However, the contract for one part of the work was between Rumble and a contractor, ABC Demolition ('ABC'), which was not in contractual relations with the union. The applicant, Labourers' International Union of North America, Local 506, contended that the performance of the work by ABC was a violation of the Agreement by Dalton because Rumble and Dalton were under common direction or control within the meaning of section 1(4) of the Act and should be treated as constituting one employer, making Rumble bound to the Agreement. As an alternative position, the union referred a construction industry grievance under section 124, and argued that the arrangement under which Rumble entered into a contract with ABC to perform the work was a sham designed to allow Dalton's subcontracting obligations to be circumvented. The union asserted that, in substance, it was Dalton which contracted with ABC notwithstanding that the form of the contract was between Rumble and ABC.

The latter argument had two branches. Dalton was the general contractor even with respect to the contracts executed by Rumble, and as such was not allowed to do through Rumble that which the contract prohibited Dalton from doing itself. In the alternative, even if Dalton was the construction manager, as claimed by the company, it was the general contractor as well, even with

respect to the demolition contract because Dalton was responsible to Rumble for ABC's work in the same manner and to the same extent as any general contractor. The only thing which Rumble did with respect to ABC was to select it from amongst the three contractors who bid the work and execute the contract prepared by Dalton. Moreover, even though Dalton did not award and execute the formal contracts, the value of those contracts was part of the cost of the work on which Dalton's fee was calculated and paid and Dalton was independently liable for the quality of the work done under the trade contracts. Therefore, the substance and reality of the ABC arrangement was that Dalton was the general contractor and the ABC contract was effectively with Dalton.

The position of Dalton and Rumble was that clearly Rumble, not Dalton, had let the demolition contract and had engaged ABC. Wood, the man who owned Rumble, wanted to have as much control as possible over how things were done on the project and did not want unionized contractors to be used. The respondent submitted that the circumstances of this case were no different in principle than where an owner lets a contract to a unionized general contractor and, before the work is performed, takes back a parcel of work and awards it to a non-union contractor. The general contractor cannot be held in breach of a subcontracting clause as a result of the owner's actions.

The Board characterized the issue as whether by entering into and fulfilling those terms of the contract with respect to the demolition work done by ABC, Dalton, not Rumble, engaged ABC to perform the work. When Rumble contracted with Dalton, Rumble expressly reserved to itself the choice of the contractors who would construct the project and the right to bind them directly to Rumble for the performance of the work. Rumble chose several of the contractors itself; thus it could not be said that Rumble did nothing more than sign the contracts. Consequently, at each time each trade contractor was engaged, Dalton did not have control over the work being awarded essential for it to have engaged the contractor either directly or indirectly. The Board found that Dalton had not violated the Agreement and dismissed the grievance.

In asserting its section 1(4) claim the union relied upon the type of contractual arrangement between Dalton and Rumble, which was "construction management". That is, Dalton became involved from the beginning in designing and planning the project. Wood also participated actively and his approval was required for every major change and for any revision to the budget. Wood visited the project daily.

The Board held it would not grant the section 1(4) declaration even if the preconditions for discretion to do so existed. Rumble was free to seek to have the project done with non-union labour. If the Board were to make the declaration, it would be analogous to the Board using its discretionary section 1(4) powers to extend bargaining rights rather than preserve them. The purpose of section 1(4) is to preserve rather than extend bargaining rights. As well, the fact that Dalton did not acquire the right or obligation to perform the demolition work was a pivotal consideration. Were one to believe that Dalton and Rumble carried on associated or related activities under common control or direction, and had Dalton transferred to Rumble a business or activity in the form of work covered by the agreement which it had the right or obligation to perform, a one-employer declaration may well have been an appropriate remedy. *Dalton Engineering & Construction Limited*, [1988] OLRB Rep. June 567.

A contract between a union representing guards and another union for services may constitute "affiliation" thereby precluding certification

This was an application by the Canadian Guards Association (CGA) for certification for a unit of security guards. Section 12 says no union shall be certified for a bargaining unit of guards

protecting the property of an employer if the union is affiliated, directly or indirectly, with an organization that admits to membership persons other than guards. At issue was whether the applicant was affiliated, within the meaning of section 12 of the Act, with the United Steelworkers of America (USWA), a union that admitted to membership persons other than guards. There was a “service contract” between the CGA and the USWA. The contract also set terms for a possible future merger of the two unions. The CGA had argued that the service contract merely provided for the sale of services, and that affiliation within the meaning of section 12 requires entities to be bound together or controlled by constitutional obligations. The Board indicated that section 12 does not have such a requirement, and found the applicant was affiliated with the USWA. The Board noted that under the contract, the USWA was obliged to make available to the CGA all support and technical services that the USWA provides to its own members, and its offices. As well, at least two-thirds of the dues paid by the members of the CGA flowed through to the USWA. The CGA had to provide a list of bargaining units and (where possible) members, and was required to co-operate and support the USWA should the USWA seek to become the bargaining agent for any or all CGA locals. At least one employee or agent of the USWA had to be invited to attend and participate in *every* meeting of all locals of the CGA. Finally, the Board noted that a telephone number in a letter soliciting membership for the CGA was answered, “United Steel Workers of America”. In the result, section 12 precluded certification of the applicant. *Pinkerton’s of Canada Ltd.*, [1988] OLRB Rep. June 613.

Employer’s proposal to implement “notional recall list” not reasonably justified bargaining position: Board directs settlement of first contract by arbitration

This case involved an application under section 40a of the Act for a direction that a first contract be settled by arbitration, as well as unfair labour practice complaints brought pursuant to sections 15, 66, and 70 of the Act. The Board reviewed the series of dealings between the parties and found that after the union had significantly reduced its demands and largely accepted the respondent College’s proposals, the College stipulated seven conditions precedent to signing an agreement. One of the conditions was that seven of the twelve bargaining unit teachers would be put on a notional recall list. This meant that they would be paid but would not return to work for the duration of the school year. Instead, replacement teachers hired during a strike would complete the year. The remainder of the bargaining unit would not be put on the list. Two of the teachers with the highest union leadership profile were not on the notional recall list.

The meeting at which the above condition precedent was proposed took place approximately three weeks after the substitute teachers had been hired, with approximately six months of school remaining before final exams and five and a half months having been completed by the striking teachers. The College’s chief negotiator acknowledged at the outset of the meeting that the proposals, particularly the recall one, would likely be intolerable to the union and an impediment to the signing of a collective agreement. The only justification given for the recall proposal was that it would be disruptive to introduce a “new” group of teachers to replace the substitutes who had been there for three weeks. The Board pointed out that there was no explanation as to why substitutes were less disruptive than permanent teachers, and found that the proposal was an attempt by the College to obstruct the union, avoid bargaining in good faith, and avoid the immediate return to work of teachers who had been leading or involved with the union. Accordingly, the Board held that the College had violated sections 15, 66 and 70 of the Act. By way of remedy, the Board ordered that the College remove the notional recall proposal from its bargaining proposals and directed that the two teachers with high union leadership profiles be amongst the persons to be reinstated forthwith.

The Board further held that the concept, timing and proposed implementation of the notional recall constituted an uncompromising and not reasonably justified bargaining position

within the meaning of clause (b) of section 40a of the Act and represented the failure of the College to make reasonable or expeditious efforts to conclude a collective agreement within the meaning of clause (c) of that section. The Board accordingly directed the settlement of a first collective agreement by arbitration. *Alma College*, [1988] OLRB Rep. July 641.

Proposal to transfer all work out of a department, thereby eliminating the unit, found to be a recognition issue which could not be pressed to impasse

In this case the Brantford Typographical Union alleged that the Brantford Expositor had bargained in bad faith by pressing its proposal over work jurisdiction to impasse. The dispute between the parties concerned the employer's position that it required flexibility in the assignment of composing room work in order to compete in an era of technological change. The employer sought the right to transfer work presently in the composing room to any other area of the newspaper or outside the newspaper if and when it chose. Throughout the negotiations the employer maintained its position that it was not prepared to discuss anything separate from the jurisdiction issue. Although life-time job security was offered to the individuals in the composing room, once the individuals were gone, there would be no more bargaining unit.

The Board's jurisprudence makes it clear that neither party to a collective agreement may press to impasse the definition of the bargaining unit, the extension of bargaining rights or other matters of recognition, because the concept of the definition of the bargaining unit and the recognition of its representative is fundamental to the scheme of the Act. However, it is clear that parties are entitled to raise and discuss these matters. The issue here was whether the employer's proposal was an attempt to restructure the bargaining unit.

What complicated the matter here was that the jurisdiction of the union and the bargaining unit were defined in identical language, a common feature in collective agreements dealing with trades and crafts. In this case the union was being asked to agree to the abolition of the bargaining unit. It was also being asked to agree that in future it would be unable to assert its bargaining rights. In these circumstances the dispute was held to be a recognition issue which could not be pressed to impasse under the section 15 duty to bargain in good faith. This was no less so because it was also potentially a jurisdictional dispute which could, if crystallized in the future, be dealt with on its merits under the Board's section 91 power to inquire into and resolve jurisdictional disputes. That was the proper forum for dealing with the employer's argument that it was being required to assign redundant work. The employer was directed to cease insisting on its proposal. *Brantford Expositor*, [1988] OLRB Rep. July 653.

ICI agreement not applying to shop

This was a construction industry arbitration referral. The union contended that certain of its members were entitled to a travel allowance when they were dispatched to work at the employer's "fabrication shop". The provincial collective agreement for the industrial, commercial and institutional sector of the construction industry stipulated that "a travelling allowance of 40 cents per mile shall be paid from the boundaries of the free zone to the job and return each day". The shop was 2.1 miles beyond the free zone.

Article 24 of that agreement, dealing with fabrication, contemplates the possibility of pipe fabrication on the job site, at a fabrication location, or in an employer's shop requiring the skills of union members. The company asserted, however, that no travel allowance was payable because the provincial agreement had no application at that location. In the company's submission, the work at its Burlington facility was more properly characterized as "manufacturing" rather than "construction work" and that, consequently, the provincial agreement did not apply. The company

acknowledged that it was bound by the provincial collective agreement insofar as its construction activities were concerned, and had always applied the agreement (and its predecessors) to all of its on-site construction and fabrication work. In addition, the company had always applied all the terms of the agreement or its predecessors to its Burlington shop, except the travel allowance, which it had never paid. The company explained that the bulk of the company's economic activities were "construction oriented", so that it was convenient to use the same tradesmen and payment system for all aspects of its business, rather than set up separate payrolls. However, the evidence respecting the kind and mix of work done at the company's shop was both unclear and somewhat contradictory. The company asserted that only 5% of the work was "construction related", and 95% was "manufacturing". The company later conceded that the shop did do some fabrication in connection with its construction activities. Indeed, at the time of the hearing 100% of its work force in Burlington was engaged in the fabrication of systems for installation at a large construction project. It pointed out however that most of the fabrication work was actually done on the job site.

There was little direct evidence relating to the interpretation of the agreement, and none concerning the bargaining parties' intentions, or the industry practice, or certain other matters. Article 24 of the agreement was the only one which expressly contemplated work of the kind which the respondent did at its Burlington facility. However Article 24 did not specify that fabrication work must be done only in accordance with the terms of the agreement, and, in fact, Article 24.2 suggested the contrary. Article 24.2 defined the term "shop" as one under an agreement with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (the "U.A."), or one of its local unions. But the U.A. was not, by itself, the designated employee bargaining agency, nor was a local union entitled to enter into an agreement or other arrangement affecting construction work in the industrial, commercial, and institutional sector without the express authorization of the designated bargaining agencies. Accordingly, the language of Article 24.2 appeared to contemplate a separate and distinct shop agreement with the U.A. or one of its locals rather than the provincial agreement. The Board decided that the implication of section 24.2 was that shop work, however it was characterized, would be the subject of a separate shop agreement either with the U.A. or one of its locals. Here there was none. The travel allowance provision used the general term "job". However, Article 24 distinguished specifically between a "job" or a "job site" on the one hand, and an employer's "shop" on the other. Travel zones and allowances only applied to roving "jobs" or "job sites". The provision did not, on its face, apply to travel to and from a permanent "shop". The Board found that the bargaining parties had not intended that the agreement would apply to the respondent employer's activities in its shop; the Board also held that the term "job" in the travel pay provision, when read together with Article 24 which distinguished job sites from shops, did not contemplate the payment of a travel allowance when tradesmen were dispatched to the latter. The grievance was dismissed. *Calorific Construction Limited*, [1988] OLRB Rep. July 662.

When voluntary recognition occurs in the construction industry, there are potentially available two open periods during which termination applications can be brought

This was an application pursuant to section 57 for a declaration terminating bargaining rights. The parties in this construction industry case had become bound to the applicable provincial agreement for the industrial, commercial and institutional sector by executing a voluntary recognition agreement. The application would be timely if the provisions of section 57(2) of the Act were applicable because that section provides that in the case of a collective agreement for a term of not more than three years, the open period for applications begins after the commencement of the last two months of the agreement's operation. The application was brought after the commencement of the last two months of the agreement. The respondents asserted that it was untimely by virtue of the operation of section 123(2) which provides that the open period in the

construction industry for terminating the bargaining rights of a voluntarily recognized union is between the 305th and 365th day of the collective agreement's operation (on a first collective agreement). This application was brought after the 365th day of the operation of the provincial agreement. The issue was whether the s.123(2) open period supplants, or is in addition to, the open period contained in section 57(2). The Board held that the general provisions of section 57 continue to apply to termination applications in the construction industry, unless such application would result in conflict with the construction industry provisions of the Act. The Board held that section 123(2) provides an open period that is in addition to the open period provided in section 57(2) of the Act. However, this scenario exists only when a bargaining agent has been voluntarily recognized and is in the construction industry. This application was timely. *Pino Drywall Construction of Ottawa Ltd.*, [1988] OLRB Rep. July 692.

Union's duty of fair representation ceases upon decertification

The complainant, a member of the door staff at a restaurant, filed a complaint under section 68 of the Act alleging that the Hotel Employees, Restaurant Employees Union, Local 75 ("Local 75") breached its duty of fair representation in the manner in which it handled a grievance. Shortly after the complaint was filed Local 75 was decertified, having been replaced by the Canadian Textile and Chemical Union. After being decertified, Local 75 stopped dealing with the complainant. The Board found that up to the time of the decertification, the union did not contravene section 68. However, because the matter had not been finally dealt with by the time of decertification, the issue arose as to whether the duty imposed by section 68 continues with respect to matters arising prior to but not resolved by the time of decertification.

Section 68 imposes a duty of fair representation on the union "so long as it continues to be entitled to represent employees in a bargaining unit". The Board acknowledged that there were policy arguments both for and against a continuing duty, but concluded that the clear wording of section 68 sent an unambiguous message from the Legislature that the duty on the union under section 68 ceases at the time it is decertified. The Board observed that its interpretation of section 68 was reinforced by subsection 56(1) of the Act. That subsection states that when one union is displaced by another, the displaced union "ceases to represent the employees in the bargaining unit". Since, by virtue of subsection 56(1), Local 75 ceased to represent the complainant, it also ceased to owe any duty to the complainant under section 68. *Reinaldo Santos*, [1988] OLRB Rep. July 701.

Board will not scrutinize loan or gift of small sum of money from one rank-and-file employee to another absent evidence of membership buying

In this application for certification the employer argued that one of its employees should not be treated as a union "member" because he had not paid at least \$1.00 "on his own behalf" as prescribed by section 1(1)(l) of the Act. The employee did not have a dollar when approached by a union organizer to sign a membership card, so he turned to his co-worker for assistance. The co-worker gave the employee a dollar and the employee, in turn, gave the dollar to the union organizer. There was no discussion between the two employees regarding the responsibility to repay the dollar. The dollar was not in fact repaid and the union organizer who collected the money did not inform himself as to whether or not there had been repayment. The collector did however sign a Declaration Concerning Membership Documents, Construction Industry (Form 80), stating that each member on whose behalf membership evidence was submitted personally paid the membership fee on his own behalf. The Form 80 requires that any exceptions to this statement be recorded, and the collector listed no exceptions. In addition to arguing that the employee should not be treated as a union "member", the employer argued that the failure to

record the “loan” on the Form 80 declaration invalidated that document and was fatal to the whole application for certification.

The Board held that the dollar paid in the circumstances outlined above met the requirements of section 1(1)(l) of the Act and provided the requisite confirmation of the written document contemplated by the statute. That being so, there was no error, omission or misstatement on the Form 80 declaration. While it may have been wiser for the union organizer to note the loan/gift he had witnessed, there was nothing improper in his failure to do so. The Board reviewed the law regarding “non-pay” as outlined in *RCA Victor Company Ltd.*, 53 CLLC ¶16,067. In that case it was held that a monetary contribution from a person other than the applicant for membership would not be accepted as evidence of payment. The rationale was that the money payment constituted a “financial sacrifice” and as such was confirmatory evidence of the desire of the payer to become a member of the trade union. However, not every loan to a prospective member would be fatal to an applicant’s case, especially where the money was repaid. The Board held that whatever may have been the case 35 years ago when *RCA Victor* was decided, today payment of one dollar could not be considered to be a true “financial sacrifice”. Rather, today the purpose of such payment is symbolic, and provides a simple statutory formula for determining union membership.

The Board is entitled to demand strict compliance with the statutory requirements and to reject membership evidence where the union fails to collect the \$1.00 payment or to conduct the inquiries necessary to complete the Form 80 declaration. However, there comes a point when technical adherence to alleged “rules” becomes remote from the real life experience of employees whose interests must also be considered if the Board is to fulfill its statutory mandate. The ordinary employee in a plant or on a construction site does not seriously distinguish between a loan of a dollar which s/he “solemnly” undertakes to repay and an outright gift of a nominal amount. The Board will thus not ordinarily be concerned about the advance of small sums of money from one rank -and- file employee to another whether by way of “gift” or “loan”. The Board will not scrutinize such gifts or loans unless the evidence suggests that a person associated with the union was “buying memberships”. Absent such evidence it is artificial to focus on the expressed or presumed “intent to repay” of an individual employee in respect of the relatively trivial sum necessary to meet a statutory requirement which today is merely symbolic.

The Board was satisfied that the employee would have repaid the dollar to his co-worker had the latter asked for or expected it. Alternatively, the Board found that the dollar was a gift to be used by the employee as he saw fit. The money was thus tendered by the employee “on his own behalf” to support his written signification that he wished to join and be represented by a trade union. Whether characterized as a “gift” or a “loan”, the dollar was the employee’s to do with as he pleased, and advancing that sum in support of his application for union membership met the requirements of section 1(1)(l) of the Act. *Calvano Lumber & Trim Co. Ltd.*, [1988] OLRB Rep. Aug. 735.

Board found no sale of business where one meat packing business purchased assets of another through trustee in bankruptcy

In this application pursuant to section 63 of the Act the union alleged that a sale of business had occurred and that the respondents were successor employers to Royal Dressed Meats Inc. (‘RDM’). The respondents and RDM were both in the meat packing business when RDM went into bankruptcy. The factors leading to RDM’s demise included revocation of the company’s licence to slaughter livestock as a result of allegations that the company falsified the weights of cattle killed, the laying of criminal fraud charges against certain principals of the company and bad publicity generated both by the criminal charges and by allegations that the company had sold tainted meat. The respondents purchased the assets of RDM from the trustee in bankruptcy. In

particular, the respondents acquired 6.97 acres of land, a federally inspected building situated on the land, and the machinery, equipment and vehicles of RDM. It was important to the respondents to acquire a federally inspected plant, as this allowed them to avoid the costs associated with bringing a plant up to current standards.

The Agreement of Purchase and Sale was limited strictly to the sale and purchase of assets. No one associated with RDM was involved in the financing of the acquisition of the assets by the respondents. The respondents did not acquire RDM's customer list, logos or trademark. By the time the respondents commenced operations, there was "bad will" rather than any goodwill associated with the predecessor business. The property, plant and equipment purchased were sufficient to enable the respondents to commence a wholesale meat packing business approximately seven times the size of the current business. Because of the difference in the size and type of business, the respondents were using only one half of the plant previously operated by RDM. The respondents purchased the property in the hope of increasing their operations to double the size of their current business and of severing and selling any unneeded property. In addition to acquiring the entire plant and equipment of RDM, the respondents continued to employ two of RDM's managerial employees, namely, the plant engineer and the plant manager. The plant manager was a former Vice-President and Director of RDM and one of its shareholders. The agreement of Purchase and Sale was not however contingent upon acquiring the services of the plant manager, nor upon having him participate in the operations of the respondents. While the respondents wanted to make use of his expertise, they did not expect him to help the respondent's business. In fact the respondents acquired very few customers of RDM. The respondents attracted new customers on their own initiative and not by reason of their having acquired the plant and assets of RDM.

The Board held that while there had been a "sale" there had not been a sale of a "business" or "part" of a "business" within the meaning of section 63. The Board was not prepared to draw an adverse inference from the fact that the plant and property purchased were seven times bigger than the respondents' current requirements. Just because a purchaser hopes to acquire all or part of a vendor's business does not necessarily mean that the purchaser has been "sold" the "business" within the meaning of section 63. In order for the sale of "something" to constitute a sale of a "business", there must be a transfer of a "coherent and severable part" of the predecessor's economic organization sufficient to enable the successor to perform a definable part of the functions formerly performed by the predecessor. In this case, the plant and equipment were merely isolated assets and did not constitute the "business" of wholesale meat packing. The fact that the plant acquired was federally inspected is not determinative. There is a difference between acquiring a licence to operate and acquiring the benefit of owning a federally inspected plant. There was no necessity for the respondents to operate from a federally inspected plant. While goodwill is an integral part of the business there was no transfer of goodwill from RDM to the respondents. Nor did the respondents' relationship with one of RDM's former employees amount to a transfer of goodwill. Where a purchaser purchases the assets of another employer bound by a collective agreement in order to further its own expansion, a "sale of business" is unlikely to be deemed to have occurred unless the business entity which results can be described as having its roots in the predecessor's business. In this case the Board found that the roots of the respondents' business lay in its own previous business. The essence of that business, its most important asset, was its President, whose skills and personal relationships with customers made the business a profitable one. Neither the plant nor the equipment form the "key" elements of the "business" of wholesale meat packing. The key elements are entrepreneurial skills, managerial ability and sales techniques. These key elements remained constant when the respondents acquired RDM's assets and they were absent from the RDM business operations. The minimal overlap in the customers of the respondents who had previously been customers of RDM points to the different natures of the

two business entities. RDM's customer base consisted primarily of large chain retail grocers while the respondents' customers were small independent retailers. The respondents through their own solicitation of customers managed to gain a small percentage of former RDM customers. This acquisition is not indicative of a sale of all or part of a business within the meaning of section 63 of the Act. *Crown Packers & Realities Ltd.*, [1988] OLRB Rep. Aug. 752.

Board declines to defer to arbitration where violation of statutory freeze allegedly based on violation of significant statutory rights in addition to breach of collective agreement

This case involved several complaints brought by the Retail, Wholesale and Department Store Union ("RWDSU") against Cuddy Food Products Ltd. ("the employer"). The RWDSU had earlier appeared before a differently constituted panel on an application for certification, seeking to displace the United Food and Commercial Workers International Union and its Local 175 ("UFCW"). At the time the present case was heard, no decision had yet been rendered on the certification matter. The UFCW was granted status to intervene in these proceedings by virtue of its existing bargaining rights.

The RWDSU alleged that the employer violated section 79, the statutory freeze provision. The basis for that allegation was that the employer acted contrary to the provisions of its collective agreement with the UFCW when those provisions were statutorily frozen by the RWDSU's application for certification. The RWDSU's complaints further alleged that the employer violated the collective agreement because of the grievors' support for the RWDSU. Thus, the basis for the allegation that the statutory freeze provision had been violated was not merely that the employer had breached the collective agreement. It was alleged in addition that the breach was motivated by anti-union animus. The issue was whether in these circumstances the Board should defer to arbitration.

The employer argued that the Board should refuse to inquire into the complaints. It emphasized that the complaints were primarily contractual in nature, and therefore should be addressed through the grievance and arbitration process of the collective agreement. The UFCW also urged the Board to defer to arbitration. While it acknowledged the Board's authority to inquire into unfair labour practices, it argued that where, as here, the incident giving rise to the complaint is contractual in nature, the affected employees should grieve. Otherwise, argued the UFCW, the RWDSU would be permitted to interfere with the UFCW's right to represent the employees. Counsel for the UFCW indicated the union's willingness to assist the individual complainants in the preparation of their grievance and to assist them throughout the grievance procedure. The RWDSU argued that the Board should not defer to arbitration. It argued that persons known to be RWDSU supporters were being discriminated against and that it had the right to prosecute actions taken against its members by reason of their union membership. The RWDSU argued further that deferral to arbitration would not provide an adequate remedy because, for example, a board of arbitration was unlikely to direct the employer to stop harassing RWDSU supporters. Similarly, such board could not resolve the dispute between the two unions, as the RWDSU was not a party to the collective agreement and could not therefore be a party to the arbitration process under the collective agreement.

The Board held that in the circumstances of this case, and in light of the alleged violations of significant statutory rights, it would not be appropriate to defer to arbitration. In canvassing the issue of when and under what circumstances the Board ought to defer to arbitration, the Board referred to *Valdi Inc.*, [1980] OLRB Rep. Aug. 1254 and *Imperial Tobacco Products (Ontario) Limited*, [1974] OLRB Rep. July 418. Those cases established, *inter alia*, that deferral to arbitration must be consistent with the public interest and with the Board's responsibility to administer the Act, and must be capable of effectively resolving both the unfair labour practice alleged

and the violations of the collective agreement. The Board held that in the circumstances of this case deferral to arbitration would accomplish neither of these objectives. The Board has a statutorily imposed duty to ensure that where one union is seeking to displace another, the employees are operating in a work environment which allows them to join the trade union of their choice. The public interest in ensuring that freedom of choice is paramount and cannot necessarily be addressed through the grievance and arbitration process found in the collective agreement. Furthermore, should the matter be deferred, the remedies available may be inadequate: the employer did not appear to be prepared to waive its right to raise timeliness arguments, which would impact on the arbitrability of any grievances filed. The Board will not normally defer to the arbitration process absent assurances that the aggrieved persons will have access to that process and have full opportunity to obtain a remedy using that process. Moreover, a private board of arbitration does not have available to it the Board's sophisticated array of remedies which can benefit bargaining unit employees collaterally affected by an unfair labour practice. For example, the remedy of a posting of notices is unlikely to be awarded by a private board of arbitration.

In declining to defer to arbitration, the Board emphasized that a trade union seeking to displace an incumbent union ought not to come before the Board alleging a violation of the statutory freeze based *solely* on an alleged violation of the collective agreement. Where such is the case, the alleged violation of the collective agreement is a proper matter for the arbitration process. The Board also emphasized that not every argument that deferral to arbitration would result in inadequate remedies will cause the Board to refuse to defer: the fact that the RWDSU was not a party to the collective agreement and could not invoke the grievance procedure was not determinative of the Board's decision. Rather, it was the need to determine significant statutory rights of the RWDSU and of employees that caused the Board to decline to defer to arbitration. In the absence of issues raising such significant statutory rights, the Board would not be prepared to assume that the UFCW would be unable or unwilling to seek full redress for aggrieved employees. *Cuddy Food Products Ltd.*, [1988] OLRB Rep. Aug. 768.

Mere performance of labour not an “undertaking” within meaning of *Crown Transfers Act* although provision of services may be

In this case the union sought a declaration under the *Successor Rights (Crown Transfers) Act* (“the Act”) that the Crown transferred an undertaking to a private entity and that the private entity was bound by the collective agreement existing between the union and the Crown. The union cited three instances of alleged transfers of undertakings. In each case, the functions being performed by the employees of the private respondent were previously carried out by Crown employees. One instance concerned the alleged transfer of the task of transplanting seedlings at a Crown nursery. Before 1988, the summer transplanting was done exclusively by Crown staff. In 1988, it was done exclusively by employees of a private business, called Moose Creek, except for quality control which was carried out by a small number of seasonal Crown staff. Of the employees hired by Moose Creek, 34% had worked for the Crown the previous summer. Moose Creek supervised the employees, but the Crown established the specifications for lifting and transplanting, adherence to which was ensured by the Crown's quality control employees. The Crown provided all necessary equipment to Moose Creek.

A second contract involved the maintenance of facilities and day-to-day management of a park, including the provision of information and the issuance of permits to users of the Park. The contract, which covered the period of May 17, 1988 to March 31, 1989, was given to a Mr. Luckasavitch, who lived with his wife on one of the Park campgrounds. In 1987, the Crown performed the functions covered by the contract, but hired a person to collect fees for permits during July and August only. At other times there was a “self-serve” system for issuing permits. While the persons formerly employed by the Crown worked five days a week, Luckasavitch was available 24 hours,

seven days a week. There was, however, nothing in the contract imposing such a condition. The Crown argued that because of the availability of Luckasavitch, the tasks performed by him constituted a new “project”, and that there could not therefore have been a “transfer” of anything. The Crown argued further that the contract merely entailed the transfer of the opportunity to do work and was therefore not encompassed by the Act. The union argued, on the other hand, that the word “work” in clause 1(1)(h) of the Act refers to the performance of labour by employees rather than “a work” in the sense of an entity.

The third contract involved the performance of janitorial services in a particular portion of Algonquin Park by a private business known as Charmaine’s Janitorial Services. This contract gave a detailed description of when and how various facilities were to be cleaned during specific periods during the summer. In 1987, the same work was done by seasonal staff of the Crown. Three of those seven employees went to work for Charmaine’s. Again, the Crown argued that there was merely a transfer of work. The issue with respect to all three contracts was whether the functions specified therein constituted “undertakings” within the meaning of section 1(1)(h) of the Act and if they did, whether there had been a “transfer” from the Crown to the private respondents within the meaning of section 1(1)(f) of the Act. The Board held that in all three cases there had been a transfer of an undertaking or part of an undertaking and that the private entity was therefore bound by the collective agreement between the Crown and the union. Generally speaking, under both the *Crown Transfers Act* and section 63 of the *Labour Relations Act* the union’s bargaining rights and the employees’ choice of representation should be continued where the essential activity remains the same, but carried out by another employer, and the essential employment relationship remains the same.

With respect to the transplanting contract, the Board found that it encompassed part of a program run by the Crown. When the Crown transfers part of a project and retains an interest in ensuring that the work performed is consistent with Crown standards there is a transfer of an undertaking within the meaning of the Act. With respect to the maintenance contract, the Board rejected the Crown’s argument that a new “project” had been created. The Board found that the contract merely required that Luckasavitch perform the project comprised of selling permits or providing information in a different manner than did the employee of the Crown who previously performed it. Essentially, the functions remained the same. The Board agreed with the Crown’s argument that the transfer of the opportunity to do work is not encompassed by the *Crown Transfers Act*. The Board held that the definition of “undertaking” in clause 1(1)(h) of the Act does not include the mere performance of labour in itself. The Board held, however, that provision of services may constitute an undertaking within the meaning of section 1(1)(h) of the Act. The provision of services is a function integral to modern governments and the purpose of providing such services is to carry out a government undertaking or part of an undertaking. While the purposes of section 63 of the *Labour Relations Act* and that of the *Crown Transfers Act* may be the same, the activities encompassed by the two provisions are not similar. “Business” and “undertaking” are not synonymous; nor is the definition of “part” of an undertaking the same as that of “part” of a business. The definitions must take into account the different ways in which government carries out its functions and acts as an employer. The notion of a coherent and severable portion of a business which applies under section 63 is not necessarily appropriately transferred to the *Crown Transfers Act*. A program or project may be comprised of several distinct functions which can be severed, but which do not constitute a microcosm of the whole. The Board held that what was transferred between the Crown and Luckasavitch was not merely the opportunity to perform work or engage in labour. The operation of the provincial parks is a program of the Ministry of Natural Resources and whether the tasks performed by Luckasavitch constituted a “project” or other form of undertaking, they did constitute part of an undertaking which had been transferred from the Crown to Luckasavitch. With respect to the contract to Charmaine’s, the

Board again rejected the Crown's argument that there was merely a transfer of work. The Board held that the provision of cleaning services in a particular portion of Algonquin Park, where operation of the Park would be undermined without such services, constituted part of the undertaking carried on by the Crown and was therefore encompassed by section 1(1)(h) of the Act. *Charmaine's Janitorial Services*, [1988] OLRB Rep. Sept. 871.

Part XI occasional teachers who teach in French language included in bargaining unit with occasional teachers providing instruction in English

This case involved a dispute over the description of an appropriate bargaining unit of occasional teachers governed by the *Education Act*. The respondent operated twenty-one English language schools and two French language schools. Part XI occasional teachers taught in the French language. They received essentially the same training as other occasional teachers, only it was carried out in a different language. There was little interchange in work assignments between Part XI and other occasional teachers. Teachers employed by the respondent other than occasional teachers were covered by the *School Boards and Teachers Collective Negotiations Act* ("Bill 100") rather than the *Labour Relations Act*. Bill 100 divides its teachers into English instruction and French instruction bargaining units. It does however permit French and English language teachers to bargain jointly and those employed by the respondent had in fact bargained jointly for the previous ten years and were covered by one collective agreement. Non-teaching staff and education assistants comprised another bargaining unit which was represented by the Canadian Union of Public Employees Local 1479. That unit included staff working with both French and English language schools, and was covered by one collective agreement. The respondent's established policies with respect to wages, benefits and working conditions were generally the same for all occasional teachers regardless of the language in which they taught. The applicant argued that Part XI occasional teachers should be included in a bargaining unit with occasional teachers providing instruction in the English language. The respondent argued that Part XI teachers should be excluded from the bargaining unit: the two groups did not share a community of interest and the occasional teachers bargaining units should mirror those of the Bill 100 teachers.

The Board held that a unit of employees including all occasional teachers of the respondent was appropriate for collective bargaining. Referring to *Le Conseil Scolaire d'Ottawa*, [1985] OLRB Rep. July 1090 and to *Sault Ste. Marie District Roman Catholic Separate School Board*, [1988] OLRB Rep. Jan. 91, the Board held that either bargaining unit structure may be appropriate, depending on the circumstances of the case. In this case, Part XI and other occasional teachers had more similarities than differences. Given the similarities in their work, their working conditions and their employment structure, it was difficult to say that they did not share sufficient community of interest to bargain together. The Board drew on the experience of the parties with Bill XI teachers, which indicated that bargaining together had been a satisfactory arrangement for many years. The Board also noted that Part XI occasional teachers were given notice of the application along with the other occasional teachers, and none came forward to object to their inclusion in the bargaining unit. The respondent did not suggest that inclusion of Part XI occasional teachers would cause serious labour relations problems, and an all-inclusive occasional teacher unit was more consistent with the respondent's existing bargaining arrangement. The Board rejected the respondent's argument that the Board should mirror the bargaining structure set out in Bill 100. That legislation gives recognition to factors such as religion, language, ethnicity and gender, which are foreign to private and other public sector labour relations as well as to the Board's criteria for bargaining unit determinations. While the Board did not rule out that the bargaining structure imposed on the education sector may be relevant to occasional teacher bargaining units, it held that there was nothing in this case to indicate that it should provide a blueprint for the bargaining

unit before it. *Frontenac-Lennox and Addington County Roman Catholic Separate School Board*, [1988] OLRB Rep. Sept. 888.

Board orders advance production of tape recordings on which union intends to rely

In this application for certification pursuant to section 8 of the Act, the union alleged that the employer engaged in various unfair labour practices. The detailed particulars filed by the union included quotations of statements allegedly made by company representatives. These quotations led the company to believe that some or all of the statements may have been tape recorded. At the commencement of the hearing the employer requested the Board to order the union to produce any tape recordings which it had of statements made to employees by company officials during the period covered by the complaint. The employer argued that the order should be made in order to prevent “trial by ambush” and that advance production of such tapes could reduce the time required to complete the hearing. The employer argued further that production of the tapes should be ordered irrespective of whether the union intended to introduce them into evidence. The union declined to indicate whether or not it had any tape recordings in its possession, asserting that it was “none of the company’s business”. The union relied on Rule 72(1), which requires a party to provide a concise statement of material facts, etc., but not the evidence by which those facts are to be proved. The union argued that neither the Act nor the Rules contemplated pre-hearing production, and that the Board should not adopt such a procedure.

The Board was not prepared to direct production of tape recordings on which the union did not intend to rely, but did direct that the union produce any tape recordings in its possession on which it intended to rely in the proceedings. Holding that its power to so direct derived from sections 102(13) and 103(2)(a) of the Act, the Board noted that in recent years the Board had taken a number of steps to foster advance production of documents. In particular, the Board referred to Practice Notes 15 and 18 and to previous Board decisions directing pre-hearing production of documents in particular cases. The Board noted that in appropriate cases, advance production of documents could promote settlement discussions and expedite the hearing process by minimizing the need for document related adjournments. On the other hand, the Board also recognized the possibility that hearing and deciding issues concerning the proper scope of advance production may delay the disposition of a case. The Board was satisfied that the type of order for production made in this case would expedite the hearing of the matter without giving rise to problems concerning the adequacy or completeness of production, because the union would be precluded from relying on any tape recordings which it had not produced. *Ontario Bus Industries Inc.*, [1988] OLRB Rep. Sept. 914.

Local formwork agreement which is inconsistent with statute not creating ICI bargaining rights province-wide

In this referral to arbitration pursuant to section 124 of the Act, the Board was called upon to decide whether the employer, a company engaged in concrete formwork, was required to apply the Labourers’ Union provincial industrial, commercial and institutional sector (“ICI”) agreement to certain construction projects in Cambridge, Ontario. In 1984 the employer voluntarily recognized Labourers’ Local 1059. Shortly thereafter, the parties entered into a ‘formwork agreement’ which applied to all of the employer’s concrete forming work in all sectors in the London, Ontario area, including ICI projects. The agreement did not extend beyond London, nor did it bind the employer to the ICI agreement in London or elsewhere. Until 1988-89 the agreement remained unrestricted with respect to the sector in which formwork was done. The company did not apply the provincial ICI agreement and Local 1059 made no complaint. Problems arose however when the company became engaged in a project in Cambridge within the geographic jurisdiction of Local 1081. The company insisted on using a crew of members from Local 1059 and denied any

obligation to apply the ICI agreement to the work in question. Local 1081 contended that the company was required to use *its* members, and apply the terms of the provincial ICI collective agreement. The issue was whether the company had a bargaining relationship with Local 1081 and whether the provincial ICI agreement might apply to a construction project in Cambridge.

Local 1081 argued that by virtue of sections 144(4) and 137(2) of the Act, the initial voluntary agreement and the subsequent collective agreements with Local 1059 created ICI bargaining rights for Local 1081 as well, and also for all other Labourers' locals throughout Ontario. Local 1081 further argued that bargaining rights cannot be limited in ways which are not permitted by statute, and that once ICI bargaining rights are acknowledged, the provincial ICI agreement must be applied. Insofar as the London formwork agreement pertained to the ICI sector, argued Local 1081, it was inconsistent with section 146(2) of the Act, the terms of the ministerial designation, and the potential exemptions from the provincial scheme contemplated by section 139(2). The company was therefore bound by the provincial ICI agreement despite its purported local arrangement with Labourers' Local 1059. The company argued that its local formwork agreement did not fall within the ambit of section 146(2) because of the way in which the Minister framed the Labourers' employee bargaining agency designation. In the company's submission, the words of the designation suggested that Local 1059 could acquire bargaining rights or become bound by a collective agreement affecting all sectors of the construction industry covering employees engaged in concrete forming, in which case it would not be an affiliated bargaining agent within the meaning of section 137(1)(a) of the Act. The company argued therefore that insofar as the collective agreement with Local 1059 was concerned, section 146(2) could have no application. There could be no vicarious extension of bargaining rights for the benefit of Local 1081 because, for the purposes of concrete forming, Local 1059 was not an affiliated bargaining agent. Moreover, the company's collective agreement, being exempted from the provincial scheme, had no application beyond the London area - even in the ICI sector.

The Board briefly reviewed the statutory provisions within which the parties' rights had to be determined. It held that the general thrust of the legislation was that in the ICI sector, the norm is provincial bargaining through designated provincial bargaining agencies, a provincial collective agreement, and no local bargaining, collective agreement 'or other arrangement' inconsistent with the foregoing. The Board expressed doubt with respect to the company's suggestion that an affiliated bargaining agent within the meaning of section 137(1)(a) could cease to be an affiliated bargaining agent for some purposes by ministerial decree. The Board doubted that the legislature intended that exemptions from the designation might be made (and therefore exemptions from the provincial bargaining scheme might be created) other than in accordance with section 139(2) of the Act. Insofar as formwork was concerned, the Minister intended to exempt from the provincial scheme only ICI formwork which was subject to a pre-existing provincial formwork agreement conforming to the requirements of section 139(2). The Board found that the company's agreement did not conform to the requirements of that section: the company was not an employer bargaining agency and did not bargain with a council of trade unions. Its purported agreement was not province-wide. The Board concluded, therefore, that the 'formwork agreement' between the company and Local 1059, insofar as it purported to apply to the ICI sector of the construction industry, was a collective agreement or arrangement other than a 'provincial agreement' and was therefore 'null and void' by virtue of section 146(2) of the Act. That being so, the recognition clause in the agreement could not be relied upon by Locals 1059, 1081 or any other Labourers' local in Ontario to create ICI bargaining rights. Local 1081 could not argue on the one hand that the collective agreement between the company and Local 1059 was 'null and void' because it was contrary to the ICI scheme and at the same time assert that its recognition clause survives so as to provide a valid legal foundation for ICI bargaining rights for Local 1081. Nor could the voluntary recognition agreement provide an independent foundation for Labourers' bargaining rights in the

Board area it purported to cover, so that all Labourers' local unions in Ontario could assert ICI bargaining rights in their respective geographic jurisdictions. The Board held that the 1984 voluntary recognition arrangement, if it survived the subsequent collective agreements, was ineffective insofar as the ICI sector was concerned because it did not comply with the requirements of section 144(4). That being so, it could not provide an independent basis for Local 1081's bargaining rights or for its present claim. *Rockwall Concrete Forming (London) Limited*, [1988] OLRB Rep. Sept. 963.

Employer is free to explain to employees its position with respect to collective bargaining issues after negotiating with union on those issues

In this case the employer issued written communications to its employees setting out its position with respect to negotiations that were taking place with the complainant ("the Guild") about the renewal of a collective agreement. The issue was whether the employer's actions amounted to interference with the Guild's representation of employees and/or an attempt to bargain directly with employees contrary to sections 64 and 67(1) of the Act. The employer issued three written communications in total. Before the employer began distributing its reports, the Guild had issued several of its own bargaining bulletins containing exaggerations, omissions and in some cases misleading statements. All of the reports issued by the employer set out its position with respect to issues raised by the Guild in bargaining and were positions that had been conveyed to the Guild's bargaining committee prior to publication. The first report responded to issues raised by the Guild at the bargaining table and in the Guild's bulletins to its members. In it the employer sought to provide the employees with information on the company's positions and also to clarify the mistakes and distortions which the employer believed were contained in the Guild's issues. The second report, issued the day after a mediation meeting, accurately described the position taken by the employer at that meeting. The third management report was issued the day after a meeting at which the employer presented the Guild with its final offer. In this report the employer, fearing that a strike was imminent and that its position would not be fairly put to the employees, apprised employees of the final offer made to the Guild's bargaining committee. The Guild argued that such communications with employees on bargaining issues were an attempt to usurp the function of the bargaining committee and to compete with the Guild to attract the members' attention in order to encourage them to repudiate their bargaining agent.

The Board held that the employer's communications with its employees did not violate sections 64 and 67 of the Act and were well within the bounds of the employer free speech which receives explicit sanction in section 64 of the Act. An employer is free to explain its position with respect to collective bargaining issues after engaging in negotiations with the employees' bargaining agent on those issues. While employers must be circumspect when communicating with their employees, especially during negotiations, not all communications are prohibited by the Act. Communications between employer and employee which do not encroach upon the union's exclusive right to bargain on behalf of its employees are not illegal. In assessing whether employer communications in relation to collective bargaining go beyond the bounds of permitted speech, the Board considers whether they reflect an attempt to explain the employer's position at the bargaining table or rather an attempt to disparage the union. The Board also looks at the context, content, accuracy and timing of the communications. Communications of positions not first aired at the bargaining table are highly suspect. The Board rejected the Guild's view that it alone should be advising employees about the bargaining taking place with the employer. The employer's communications in this case were undertaken only after its position had been given to the Guild across the bargaining table. They were carried out in circumstances where there had existed a long-standing collective bargaining relationship, where both employer and union communications took place during the latter stages of bargaining and where there was a mutual expectation that such

communication would again take place. The employer's communications were, but for one exception, accurate and did not seek to undermine the Guild. The Board acknowledged that the employer's action in issuing the second report before the Guild had an opportunity to disclose the results of the mediation meeting to its members was a cause for some concern. The Board was nevertheless persuaded that the communications neither explicitly nor implicitly suggested to the employees that they could negotiate directly with the employer, nor did they seek to have the employees reject the Guild as their bargaining agent. *Toronto Star Newspapers Limited*, [1988] OLRB Rep. Sept. 987.

One employer declaration made despite five and one half year interval between winding up of predecessor and start of successor

In this application under subsection 1(4) of the Act for a declaration that two employers be declared one, the alleged predecessor employer, I.S.C.L., was engaged in site upgrading, landscaping, and residential work, although it did perform some work in the industrial, commercial and institutional sector of the construction industry. Shortly after voluntarily recognizing the Carpenters Union, I.S.C.L. became insolvent and was wound up (but did not go bankrupt or into receivership). Five and one half years later 671860 Ontario Ltd. began to carry on business in the construction industry, with the same principal as I.S.C.L. That principal had no ownership interest in 671860, but he was in charge of the day-to-day operations. The case raised two issues: firstly, does the five and one half year interval affect the determination of whether the two businesses constitute related or associated activities? The Board noted that in determining whether certain respondents are engaged in associated or related activities or businesses, the Board is concerned with the nature of the businesses. If the businesses or activities are related, the existence of a gap of two days or a greater period of time is of little significance. The Board was satisfied that I.S.C.L. and 671860 carried on associated or related activities. The Board then had to determine whether, given the five and one half year gap, it was appropriate to exercise its discretion to grant subsection 1(4) relief. The Board held that there was no labour relations reason in these circumstances for concluding that the bargaining rights of the union should not attach to the "definable commercial activity" simply because that activity is carried on through another legal entity years after I.S.C.L. ceased operating. In the result, the Board declared I.S.C.L. and 671860 Ontario Inc. to be one employer. *Ian Somerville Construction Ltd.*, [1988] OLRB Rep. Oct. 1022.

Failure to recall fishing boat crew at start of fishing season constituting discrimination

The company had put two boats out fishing in the 1987 season instead of the usual three. As a result, fewer crew members were required. The seven grievors claimed that the reason they were not fishing for the company was that they were supporters of the union, and that the company by not "recalling" them for the 1987 season contravened sections 66 and 70 of the Act, which prohibit employer interference in employees' rights and intimidation and coercion. At the hearing the respondent directed his legal submissions on section 66 to only the elements of "refuse to employ or continue to employ" on the basis that the complaint did not set out 'discrimination' as a separate violation. The parties were subsequently asked to make written submissions on the application of the term "discrimination" to the evidence. The Board held that it was prepared to find that a section or portion of a section that had not been pleaded had been contravened if the evidence supported such a finding. Section 66(a) of the Act, which prohibits employer interference with employees' rights, refers to both "refuse to employ or continue to employ" and to "discriminate". Not only does the Board have jurisdiction to find a violation when the evidence supports a finding but it has an obligation to do so as long as the respondent is given the opportunity to argue the case on that basis. The fact that the workers had not asked for a job in this case was not determinative of whether they would return the following year. A denial of the reasonable expectation of the

crew members with respect to employment in a subsequent year because they support the union may constitute discrimination. In this case there was a breach of the Act. The Board refused to order another boat put to work but it stated that reinstatement may be an appropriate remedy in the fishing industry in other circumstances. Compensation was ordered for the 1987 season and the 1988 season until the date of the decision. *Saco Fisheries Limited*, [1988] OLRB Rep. Oct. 1087.

Parties may enter into valid voluntary recognition agreement at a time when there is only one employee

Square One Carpentry performed house framing on a piece work basis pursuant to a subcontract with F.E.D. Construction Company ("FED"). FED was bound to a collective agreement with the Labourers' Union, Local 183, which required that all self-employed piece workers, such as the Square One workers, be signatories to a contract with Local 183. The vast majority of FED's work was performed by it as a contractor to Greenpark Homes (the builder). A representative of FED told a partner of Square One that he had to sign with Local 183 or he could not work on any of Greenpark Homes' sites. Subsequently the two partners and the single employee of Square One became members of Local 183 when they signed membership cards in each others presence. Then, Square One and the union signed a collective agreement. Later, due to a shortage of workers Square One accepted crews sent by the Carpenters' Union. Subsequently the Carpenters made an application for certification, which ultimately was granted by the Board. In the instant case the Labourers sought reconsideration of that decision arguing that the collective agreement was a bar to the certification; the Carpenters brought an unfair labour practice complaint attacking the validity of the alleged collective agreement of the Labourers. The Carpenters argued that since the Board is precluded from certifying a trade union for a one employee bargaining unit, the Act implicitly recognizes that a trade union cannot obtain bargaining rights, even through voluntary recognition, for a bargaining unit of fewer than two employees. The Board held that having placed a restriction on the numerical size of a bargaining unit for the purposes of a certification application but not in the case of a bargaining unit created through the process of voluntary recognition, the Legislature did not intend to preclude parties from entering into voluntary recognition agreements where the bargaining unit consists of one employee.

The Carpenters further argued that the voluntary recognition agreement was invalid due to employer support contrary to section 48 of the Act. These submissions focused on the statement by the FED representative to a partner of Square One that he had to sign with Local 183 or else he could not work on any of the Greenpark Homes' sites and the way in which Local 183 obtained the membership evidence. The Board dismissed the argument. There was no evidence that the Labourers' Union had been aware of the statement; moreover, the statement was designed to ensure that FED complied with its obligations vis-a-vis sub-contracting under its contract with the union. As regards the membership evidence, there was no indication that the partners had discussed joining the union with the employee or directed the employee to join. As well, it is common practice in this sector of the construction industry for the principals of small businesses to perform work and be members of the union. It was probable that the prime reason the employee signed with Local 183 was because he wished to remain working at that site and realized that this would not be possible unless he joined Local 183, in view of the subcontracting clause. Finally, the Square One agreement with Local 183 had been in effect for a number of years with no indication from employees that they did not want Local 183 to represent them. The section 89 complaint was dismissed and the Carpenters' certificate was revoked. *Square One Carpentry Inc.*, [1988] OLRB Rep. Oct. 1112.

Municipal-wide unit of cleaning employees appropriate where employer having only one location

This case involved an application for certification brought by the Canadian Union of Postal Workers with respect to certain employees of Best Cleaners and Contractors Limited. The employer was a cleaning service which until recently performed work on a contract basis outside the province. The contract which gave rise to this application for certification was with a postal plant in Toronto. The respondent had no other contracts in Metropolitan Toronto. The parties were in dispute over the proper description of the bargaining unit. The applicant argued that the Board should follow its usual practice, which is to certify on a municipal-wide basis where the employer is established at only one location. The respondent's position was that the geographic scope of the unit should be limited to the specific location. The respondent argued that since it was dependent on the contractor for the contract which gave work to the employees, the rationale of the municipal-wide unit was not applicable. The employer could not simply move its establishment to a new location to avoid the certification.

The Board referred to *VS Services Ltd.*, [1987] OLRB Rep. June 931, a decision concerning another contract industry. The respondent in *VS Services Ltd.* had a contract to supply cafeteria services to a client at a specific street address in Chatham. Subsequent to the date of application, but prior to the hearing, *VS Services Ltd.* commenced a second contract to supply cafeteria services in Chatham. The Board in that case found that in the Ontario non-vending food service industry there had developed a wide-spread practice of parties agreeing to client-specific bargaining units. On that basis, and on the basis of the community of interest between employees at the two locations and the distinct response to client needs in the contracts entered into (which resulted in different terms and conditions of employment), the Board in *VS Services Ltd.* certified the union for the employees of the one client, rather than for the City of Chatham. The Board also referred to *T.R.S. Food Services Limited*, [1980] OLRB Rep. Apr. 542, where the panel expressed the concern that a unit limited to one client meant that bargaining rights would be completely dependent on the continuation of the contract between the employer and the particular client being serviced at the time of the application for certification. The Board in *T.R.S.* went on to find that given the fluctuations of the market place and the competition for contracts, the geographic scope of the bargaining unit should be defined by reference to the municipality where the employer has but one location in the municipality.

The Board held that the bargaining unit should be described in terms of the municipality of Metropolitan Toronto. The Board recognized that the 'contract industry' raised certain distinct issues affecting employers, unions and employees. It noted further that certification in the cleaning industry has been limited to a street address in several cases, but that this was on the agreement of the parties. While there appeared to be a pattern of bargaining limited to specific locations developing in the cleaning industry, the Board had not yet developed distinct approaches to either the cleaning industry particularly or to the contract or service industry generally. The Board held that it would depart from its usual practice of certifying on a municipal-wide basis when the circumstances warranted it. The fact that parties in the industry had a practice of agreeing to limit units to one location or client was not sufficient to persuade the Board to depart from its usual practice because the parties in the present case were not in agreement as to that practice. A cleaning subcontractor with only one location in a city may be able to satisfy the Board that it would be appropriate to certify for a single location or unit where there is evidence of actual diverse contracts elsewhere in Ontario, or a history of bargaining with the applicant union. In the present case, however, the Board was not persuaded that it should depart from its usual practice. *Best Cleaners and Contractors Limited*, [1988] OLRB Rep. Nov. 1143.

Section 13 not applicable absent evidence of union complicity in employer support of a trade union

In this case both the Labourers' Union, Local 183 and the Carpenters' Union, Local 27 were applying to be certified as the exclusive bargaining agent for a unit of employees in the construction industry. Local 27 alleged that the employer and Local 183 dealt with Local 27 in a manner contrary to sections 3, 13, 64, 66 and 70 of the Act, and submitted that the Board should dismiss Local 183's application because of the company's improper conduct. The Board found that the principal of the employer told some employees that it would be better for the company and for them if they became members of Local 183 rather than Local 27. The Board held on these facts that the employer improperly interfered in the selection of a trade union. The Board held further that while the employer's actions constituted a violation of sections 64 and 70 of the Act, no violation of section 66 had been proved. The Board refused in the circumstances to accede to Local 27's request that Local 183's application be dismissed.

With regard to section 13, which precludes the Board from certifying a trade union where there has been employer interference, the Board noted that there was no evidence to suggest that Local 183 participated in, or was even aware of, the employer's improper actions. The Board agreed with the finding of the Board in *Cabral Foods Inc.*, [1985] OLRB Rep. Feb. 165 that in such circumstances it was not appropriate to dismiss an application for certification pursuant to section 13 of the Act. The Board held that in order for section 13 to apply, there must be some complicity between an applicant trade union and an employer. *Povoa Carpentry Trim*, [1988] OLRB Rep. Nov. 1174.

Board finds sheet metal shop employees fall within construction industry bargaining unit

In this application for certification in the construction industry, the applicant challenged the inclusion of certain persons on the list for purposes of the count. The respondent was engaged in the retrofit of wall facings and window openings. On the date of application, the respondent had employees working at two job sites as well as at its shop. The respondent argued that the shop employees should be included in the bargaining unit since they were commonly associated in their work with on-site employees within the meaning of section 117(b) of the Act. The materials used by the respondent on its construction sites were generally fabricated in its shop. The employees who performed work in the shop were involved primarily in the fabrication of metal products destined for a particular project of the respondent. These employees did not work in the shop exclusively; they frequently worked on construction sites performing bargaining unit work.

Having regard to these facts, the Board held that the shop employees were commonly associated in their work with on-site employees and, therefore, fell within the bargaining unit description. *Rainscreen Metal Systems Incorporated*, [1988] OLRB Rep. Nov. 1180.

Employer cannot invoke Charter of Rights to challenge union security clause in province-wide ICI agreement

In this construction industry grievance the Board was required to determine as a preliminary matter whether a "union security" provision contained in a collective agreement between the Operating Engineers Employee Bargaining Agency and the Operating Engineers Employer Bargaining Agency was subject to the *Canadian Charter of Rights and Freedoms*. The applicant alleged that the respondent violated the union security provision of the collective agreement. The respondent invoked the Charter to challenge the validity of that article of the collective agreement. The respondent did not challenge the constitutional validity of the various provisions of the Act which bound the respondent to the collective agreement. It argued, rather, that the collective

agreement itself was subject to Charter scrutiny and that the relevant provision of the collective agreement was void by reason of being contrary to the Charter.

The Board found that the respondent was a member of the Crane Rental Association of Ontario, a constituent element of the Operating Engineers Employer Bargaining Agency, and that section 51 of the Act therefore operated to bind the respondent to the collective agreement. The Board found further that the respondent was also bound by the collective agreement in respect of the industrial, commercial and institutional (ICI) sector of the construction industry by virtue of section 143 of the Act and the Ministerial designation made under section 139(1)(b) of the Act. The respondent submitted that the collective agreement to which it was subject was only binding on it by operation of statute and therefore was subject to the Charter. The applicant argued that the Charter had no relevance to the collective agreement since the respondent was bound to it by reason of private contractual obligations arising out of membership in an employer's organization that bargained with the applicant on behalf of the respondent and not by reason of legislation.

The Board reviewed the relevant jurisprudence on the Charter's application and concluded that in order to hold that the collective agreement was subject to the Charter, it must find that the collective agreement was a manifestation of government rather than private activity, i.e., that the Bargaining Agency was an agency or emanation of government. In this regard, the Board found that the collective agreement, as it related to the ICI sector, was negotiated by the Operating Engineers Employer Bargaining Agency and the Operating Engineers Employee Bargaining Agency, both of which were designated by the Minister of Labour pursuant to the Act. The creation, administration and operation of those agencies were not, however, controlled by the Minister, who gave no directions to the agencies to act in a particular way. The Board held that the negotiation of a collective agreement by the Operating Engineers Employer Bargaining Agency was essentially a private matter not involving the exercise of government policy or a government function. Relying on the case of *Tomen v. Federation of Womens Teachers Association of Ontario* (1987), 61 O.R. (2d) 489 (H.C.), the Board rejected the argument that there was a "public dimension" to the collective agreement such as to make it subject to Charter scrutiny. The collective agreement could be amended by the parties without reference to the Legislature, the Lieutenant-Governor in Council or the Minister and was, in that sense, a private matter directly affecting only employers who were members of the Employer Bargaining Agency or those for whose employees the applicant held bargaining rights in respect of the ICI sector. Being satisfied that neither of the parties to the collective agreement were manifestations of government and that the function of negotiating a collective agreement was not a public or governmental function, the Board held that the collective agreement was not subject to Charter scrutiny. *Arlington Crane Service Limited*, [1988] OLRB Rep. Dec. 1187.

Section 124 arbitration proceedings available to parties whether or not work in question is "construction work"

In this construction industry grievance pursuant to section 124 of the Act, the union alleged that the employer had contravened the terms of a collective agreement by which it was bound. In particular, the union asserted that certain work performed by employees was covered by the agreement and that the employees doing that work should have been union members working in accordance with the terms of the agreement. The employer argued that section 124 of the Act was only available to employees engaged in *construction* work, and to the extent that the activities underlying a particular grievance were not "construction", any alleged contravention of a collective agreement must be pursued through the grievance arbitration procedure. The employer asserted that the expedited process prescribed by section 124 was not available because section 124 applied only to the construction industry. If employees were engaged in a mixture of construction and non-construction activities, that portion of their duties labelled 'construction' could be pursued

under section 124, but that portion classified as “non-construction” must follow the “private route” mandated by section 44 of the Act.

The Board rejected the employer’s proposed interpretation of section 124 of the Act, and held that so long as the applicant is a “trade union” within the meaning of section 117(f), and the employer operates a business in the construction industry under section 117(c) (albeit not necessarily exclusively so), either party may resort to the expedited arbitration procedure in section 124. The Board held that this interpretation of section 124 made the most ‘industrial relations sense’. It is often difficult to distinguish “repair”, which is specifically mentioned in the definition of construction industry, and “maintenance”, which is not. One set of functions will often be done in conjunction with the other, by the same tradesman, employing the same craft skills, tools and equipment. It would make for much mischief and procedural uncertainty if a simple problem such as the non-payment of overtime had to be settled in two different forums, with the potential for conflicting interpretations of the collective agreement or contradictory notions about what is construction work and what is not. The Board further held that its interpretation of section 124 did not “open the floodgates” to claims that could not reasonably have been within the contemplation of the Legislature. Since the unions that come within the definition of “trade union” in section 117(f) of the Act are almost invariably craft unions confined to their historic craft units, it is unlikely that they will have collective agreements entirely unrelated to their construction industry base. And even if, for example, the Boilermakers’ Union found itself representing the clerical employees of a construction industry employer, the result of allowing the parties to resort to the arbitration procedure in section 124 would be positive. The parties would thereby gain access to a faster and cheaper arbitration process, with the added advantage of a Labour Relations Officer to assist them in resolving their differences without recourse to litigation. The Board’s interpretation of section 124 is thus not only attractive from the perspective of labour relations policy, it also provides aggrieved parties with an expeditious and relatively inexpensive method for resolving disputes. *Babcock and Wilcox Canada Ltd.*, [1988] OLRB Rep. Dec. 1198.

Union’s failure to consult with employees or to hold ratification vote before concluding a collective agreement violating duty of fair representation

In this application the company had operated a single plant in London but the union held municipality-wide bargaining rights. The company then opened a second plant. Employees at the new plant were told by members of management that they were not represented by a union. The employees were later informed by the U.F.C.W. that they were in fact represented by that union and that the union had concluded a collective agreement for them. At this point they turned to the R.W.D.S.U. which made a certification application. The R.W.D.S.U. argued that the collective agreement should be set aside under section 60, the provision concerning termination of bargaining rights after voluntary recognition. The U.F.C.W. argued that this was not a “first” collective agreement because the scope clause in the collective agreement at the first plant was broad enough to cover both plants and therefore the R.W.D.S.U.’s application was untimely. Finally, the employees at the new plant filed a section 68 duty of fair representation complaint against the U.F.C.W. for failing to consult them before concluding a collective agreement and asked that the collective agreement be set aside.

This case raised several issues. Firstly, had the union lost its bargaining rights for the new plant when it negotiated a collective agreement covering only the first plant? The Board explained that once bargaining rights are acquired for employees under the Act, they cannot be lost by a union unless it abandons those rights or they are terminated by the Board. Abandonment is a question of fact. By deciding to bargain separate agreements for the two plants, neither party understood that the union was abandoning its bargaining rights for the new plant when it signed the collective agreement for the first plant. Parties are free to divide a unit into two or more units.

Therefore, the collective agreement at the new plant constituted a bar to the R.W.D.S.U.'s certification application.

Secondly, had the U.F.C.W. breached the employees' section 72(5) right to participate in a vote on a strike or proposed collective agreement by failing to invite employees at the new plant to attend strike and ratification votes at the first plant? The Board reasoned that the Legislature would have intended that section 72(5), which allows "all employees in a bargaining unit" to vote, be circumscribed by the condition that these employees be affected by the vote. Those employees are, in a strike vote, only those who would be considered "scabs" if they refused to strike, and in a ratification vote, only those employees who would be bound by the collective agreement. In neither case here were the employees in the new plant "affected" by the votes since they were not going to be joining the strike nor would they be bound by the collective agreement at the first plant. It was unlikely that the Legislature intended to extend a right to participate in strike and ratification votes to employees who would not be affected by them. If the Legislature's choice of language nevertheless compelled the conclusion that the U.F.C.W. breached section 72(5), the breach or breaches were technical ones which would not violate the spirit of the subsection and would not warrant a remedial response. As a remedy was not warranted, the Board did not decide whether there was a technical breach or no breach at all.

A third issue was whether the U.F.C.W. had breached section 68 by negotiating a collective agreement with terms and conditions of employment for the new plant which were different from those of the first plant. The Board held that differences in the two contracts would not alone warrant the finding of a violation. However, the process of reaching the agreement here violated section 68 because the union failed to consult the employees before concluding a collective agreement affecting them. The failure to hold a ratification vote was also a breach of section 68 because no explanation was offered for treating the two locations differently.

The final question was whether the Board had jurisdiction to set aside the collective agreement at the new plant as a remedy for a breach of section 68. The Board noted that if the Board has the power to set aside a collective agreement by way of remedy for the unfair labour practice of only one party to it over the objection of the other party, it is a power which should be used only in compelling circumstances. There was no evidence that the employer was engaged in a conspiracy with the union to mislead the employees. If the Board does have jurisdiction to set aside the agreement, that jurisdiction was not exercised here. Nor would the Board substitute the R.W.D.S.U. as the bargaining agent. The Board could not say that the employees lost any opportunity to select a bargaining agent as a result of the union's breach of section 68. They were entitled to damages but the Board rejected the argument that the measure of those damages was the difference between the wages in the two collective agreements. *Cuddy Food Products Ltd.*, [1988] OLRB Rep. Dec. 1211.

Remedy for interference in the trade union may be denied where the union has also been cavalier towards the employer's interests

In this case some employees had asked for time off to attend a union meeting, but then ignored the decision of management not to allow the time off, and attended the meeting. Management responded with suspensions. The purpose of the meeting was to prepare for a strike. The union argued that the refusal of permission amounted to employer interference with the administration of the union or the representation of employees by the union (contrary to section 64), and that the discipline imposed both penalized employees for exercising rights under the Act (contrary to sections 66 and 70) and amounted to an illegal lock-out under section 75. The respondent testified that it would not have refused permission for employees to leave work for a negotiating meeting. However, because of the greater number of employees involved and because

the meeting had nothing to do with negotiations but involved the strike captains, the respondent decided not to allow employees to have time off. The respondent was of the view that employees were needed in the plant in light of the impending strike. However, several factors indicated to the Board that the more prominent reason for denying permission was the nature of the meeting. The respondent had made no attempt to consider whether the specific employees involved were actually required for work and the exact number of employees requesting leave was unknown. The respondent chose discipline that removed the workers from the workplace. It appeared that the volume of orders was relatively normal at this time. The number of employees who wished to leave was indeed the employer's business, both figuratively and literally; the nature of the meeting in question was not, once it was clear that it was a lawful union activity.

In the end, however, the Board decided it was unnecessary to decide whether the Act had been violated because the Board would not, in any event, grant the remedies requested by the union. The union had no cogent explanation for why the meeting had to be scheduled during working hours and held precisely as scheduled. There was no suggestion that holding the meeting after hours would either significantly limit or effectively deprive employees of their opportunity to participate. Accordingly the Board was not convinced that the union should be protected from the consequences of its own rash actions. *Del Equipment Limited*, [1988] OLRB Rep. Dec. 1248.

CLAC entitled to be certified for one craft limited to the ICI sector on a displacement application

In this application for certification made under the construction industry provisions of the Act, the Christian Labour Association of Canada ("CLAC") sought to displace the Sheet Metal Workers' province-wide industrial, commercial, institutional ("ICI") craft bargaining unit. The Sheet Metal Workers argued that CLAC, being neither an employee bargaining agency ("E.B.A.") nor an affiliated bargaining agent ("A.B.A."), was outside the scheme of provincial bargaining. CLAC could apply in the construction industry only pursuant to section 144(5) of the Act and accordingly was not entitled to a bargaining unit confined to the ICI sector and provincial in scope. The Sheet Metal Workers submitted that the appropriate bargaining unit under section 144(5) was all trades at work on the application date in all sectors in a particular Board area. The Board's usual policy in displacement applications should not be followed in these circumstances, because it would enable CLAC to obtain "through the back door" a bargaining unit it would not be entitled to on a fresh application for certification. Employees would become a "craft unit" without being represented by a craft union, and CLAC would in effect obtain a provincial ICI bargaining unit without any of the obligations imposed upon those craft unions which are A.B.A.'s or E.B.A.'s. CLAC argued that there were no legislative limitations or parameters set out in section 144(5) which would impact upon the Board's determination as to the appropriate bargaining unit. In section 144(5) applications the appropriateness of the bargaining unit stands to be determined pursuant to section 6(1) of the Act. The Board's general policy pursuant to that section has been that the appropriate bargaining unit in a displacement application is the unit held by the incumbent. CLAC submitted that nothing in section 144 of the Act prevented the Board's normal policy from applying. To deny displacement applications unless the trade union seeking to displace also sought to represent all other unrepresented trades would promote trade union monopolies of the "crafts".

The Board held that it would depart from its displacement policy only in compelling circumstances, but that such circumstances were present in this case. The Board's displacement policy is not necessarily applicable in the ICI sector of the construction industry, because the scope of the incumbent's union is statutorily compelled. The Board held that in determining the appropriate bargaining unit a primary policy consideration is to avoid results which are, or can be, detrimental to province-wide bargaining in the ICI sector. While the bargaining unit normally found to be appropriate for CLAC when it applied pursuant to section 144(5) was all trades at work in all

sectors in a Board area, the issue to be determined in this case was whether CLAC's 'normal' bargaining unit could "fit" within this displacement application without doing violence to the scheme of province-wide bargaining.

The Board found that an "all trades at work on the application date" unit was not appropriate in the circumstances of this case. Given that a trade union should only be deprived of its bargaining rights by a majority vote conducted amongst employees it represents, and that the community of interest of employees already represented by an incumbent union is distinct from the community of interest of employees unrepresented by any trade union, a unit greater than the one found in the existing collective agreement between the employer and the Sheet Metal Workers was not appropriate. To grant CLAC a unit described in "craft" like terms on a displacement application would not be inconsistent with the scheme of province-wide bargaining. No provision in the Act prohibits CLAC from representing a unit described in "craft" like terms, nor is such a result impossible on a "fresh" application for certification. The Board further found that CLAC could acquire bargaining rights limited to the ICI sector. To grant CLAC such bargaining rights where it applied for certification by way of displacement was neither harmful nor inconsistent with the concept of province-wide bargaining. While such a limitation may involve the Board in making sectoral determinations, it is more desirable that in displacement applications employees be able to choose freely which trade union, if any, they wish to have represent them. Finally, the Board held that CLAC could not obtain bargaining rights for the province of Ontario. While nothing in section 144(5) prohibits CLAC from obtaining province-wide bargaining rights, such a result would be inconsistent with the scheme of province-wide bargaining. That scheme was the result of a certain quid-pro-quo: the E.B.A.'s and A.B.A.'s were statutorily granted the right to represent employees and negotiate on a province-wide basis, but the "price" of this right were the checks and balances found in the province-wide provisions of the Act. Not being subject to any of these checks and balances, CLAC had not paid the "price" to obtain province-wide bargaining rights. *Reitzel Heating & Sheet Metal Ltd.*, [1988] OLRB Rep. Dec. 1310.

In assessing the reasonableness of an employee's belief that work is unsafe, information available only after the initial, employer's investigation is irrelevant

In this health and safety case, the complainant had refused to work a job drawing a particular kind of wire if not assigned a helper, because he believed the work was unsafe. The employer investigated and, although it could find nothing unsafe, the complainant continued to refuse to do the work. The employer indicated that no alternative work was available. It sent the complainant home, four hours early, and without pay for those hours. The complainant claimed that the loss of wages constituted an employer reprisal for enforcement of the *Occupational Health and Safety Act*, prohibited by section 24 of that Act. An employee may continue to refuse to do work following the employer or supervisor's initial investigation if, objectively speaking, the employee has reasonable grounds to believe the work continues to be unsafe. In this case, both the Ministry of Labour Inspector and a joint labour-management Occupational Health and Safety Committee at the company had done investigations in the following days and had found that the work was not unsafe. However, the Board held that these two reports can have no effect or impact on the Board's assessment as to whether the "reasonable grounds" or subjective test had been met. The Board will look only to the reasonableness of the employee's views in light of the information available at the time when only the initial investigation has been completed and the employee makes his decision whether to continue to refuse to do the work. In this case it was ultimately unnecessary for the Board to apply the further objective test because the employee had been sent home for lack of alternative work and not because he was exercising his rights under the OHSA. In the result, the complaint was dismissed. *Sidbec Dosco Inc.*, [1988] OLRB Rep. Dec. 1334.

Cross-municipality bargaining unit may be appropriate where operations are integrated

In this certification application there was disagreement about the community of interest of two persons employed as service mechanics in the Belleville area. The applicant took the position that because of the geographical separation of these employees from the respondent's main operation in Kingston, there was not sufficient community of interest between these employees and the employees in Kingston to include them in the bargaining unit. The respondent took the position that its operation was an integrated one including Kingston and Belleville and therefore that the two employees should be included in the unit. The respondent was in the business of selling soft drinks and did so out of a plant in Kingston where over thirty employees reported to work, and an office with a warehouse in Belleville where two service mechanics and a sales supervisor reported to work.

The Board stated that the operation was an integrated one and that the inclusive bargaining unit preferred by the respondent was *an* appropriate unit. The principal objection raised by the applicant was the large distance between the two locations. Given that there may be more than one appropriate unit, if the applicant's unit was also appropriate, the preference of the applicant would have increased weight. The Board's general practice has been to not include employees in widely separated municipalities in one unit. In this case the Board did not find it sound to hive off a portion of the single operation. The facts of this case, in terms of both the extent of employee interchange and general integration of the operation, were distinguishable from the cases cited which reinforce the single municipality bargaining unit policy. Therefore, the appropriate unit included both municipalities. A vote was ordered. *Coca-Cola Ltd.*, [1989] OLRB Rep. Jan. 1.

First contract arbitration time limits directory not mandatory

This was a request for an adjournment made in the course of hearings on an application under section 40a for a direction that a first collective agreement be settled by arbitration. The union had taken the position that the parties had in fact reached a collective agreement and, because the company did not agree that that was so, the union wished to prove the settlement. There was no indication that the union had given the company any prior notice of its motion. Counsel for the company would become a witness and thus the company sought an adjournment in order to retain new counsel. (The company had tried but failed to retain new counsel that day). The Board held that as a matter of natural justice, the company was entitled to an adjournment. An adjournment, and the time necessary for the motion, meant that making a decision within thirty days of receiving the application as stipulated in section 40a(2) would be impossible. The applicant did not argue that the limits were mandatory. The Board found those time limits to be merely directory, not mandatory, for several reasons. If the limits were mandatory they might in some cases prevent resolution through settlement, or require that previously scheduled proceedings be adjourned to accommodate the scheduling of at least applications like this. Moreover, the Board would be without jurisdiction to continue to deal with an application with respect to which the time limits had been exceeded. Such a result would be the antithesis of sound labour relations policy. The adjournment was granted. *Del Equipment Limited*, [1989] OLRB Rep. Jan. 19.

Board limiting its remedial relief by declaring that two companies would only be considered one employer when they work together in the construction industry

This was an application for a one-employer declaration under section 1(4). Green-King Ltd. was incorporated in 1982. Its only officer and sole shareholder was Mr. Barclay. Green-King was in the construction business. Mr. Barclay later became a construction manager at Widcor. At this time Green-King was dormant. When Widcor decided to get out of the construction business, Mr.

Barclay decided to reactivate his construction business. While still at Widcor he entered into a contract to build a car dealership with Widcor. The construction contract between the car dealer and Widcor was mirrored in the construction contract between Green-King and Widcor. Green-King did not enter into any contractual relationship with the car dealer directly. The actual construction of the dealership was done by subcontractors who entered into subcontracts with Green-King. Widcor was bound by the Carpenter Union's provincial agreement.

In the circumstances the first two criteria for a one-employer declaration were easily identifiable - there were two corporate entities and they carried on associated or related activities. A number of factors also pointed to the third criteria - common direction or control. Entities can be under common control without sharing common officers. Secondly, common control can be found where two entities share in a commercial venture. Further, in appropriate circumstances, section 1(4) may be broad enough to encompass subcontracting arrangements. In this case Widcor was not simply a purchaser of construction services but was intimately connected with the negotiations in respect of the manner of construction which occurred through Green-King. As to whether the Board ought to exercise its discretion, the contractual arrangement between the two entities eroded the union's bargaining rights. On the other hand, Widcor no longer was engaged in the construction industry. The Board therefore limited its remedial relief and declared that only in those instances where Widcor and Green-King together engage in construction industry work would they be together treated as constituting one employer. *Widcor Limited*, [1989] OLRB Rep. Jan. 66.

Membership evidence held voluntary where misrepresentation made by union official clarified by same official the next day

In this application for certification in the construction industry, the respondent alleged that certain statements made by the applicant's organizer and by one of its own employees tainted the voluntariness of the membership evidence obtained by the applicant. The evidence revealed that the union organizer had told two employees that if they did not sign applications for union membership they would not be working on the site the next morning. Employees were told that it would cost \$300.00 to join since the company was already unionized. The union organizer conveyed to the employees that they *had* to become members of the union because he was under the mistaken impression that the employer had already been organized by the union and was therefore bound to employ only union members. Both employees signed applications for membership. The union organizer had earlier conveyed the same misinformation to another of the respondent's employees. This employee, who had already joined the union, spoke often about the union to his fellow employees and indicated to them that the respondent was already unionized. Thus, several weeks before the union organizer came to the job site the employee had advised other employees that if they did not join the union, the union would probably picket the job site and shut the job down. The Board held that while the employee's comments were misleading and inappropriate, a reasonable employee of ordinary convictions would not be influenced, threatened or intimidated by such comments. The Board distinguished between statements made during an organizing campaign by rank and file employees who are not in a position to achieve the consequences of their statements, and statements made by persons who have, or are perceived to have, the authority to bring about the consequences of their statements.

The union organizer learned of his mistake the same day that he signed up the other employees. The following day he returned to the job site and advised the employees that he had made a mistake and that the respondent was not a "union" company. He informed the employees that if they wanted to be represented by the union an application for certification would have to be filed. He explained that in order to do this he would require a \$5.00 initiation fee from each employee. Each of the employees paid the \$5.00 fee and signed an application for membership.

Counsel for the employer argued that the union organizer's initial statements to the employees threatened the job security of the employees and tainted the voluntariness of the membership evidence obtained on that day. Counsel argued that the threats were not 'cured' by the statements made by the union organizer the following day. Counsel argued further that the \$5.00 initiation fee, following so closely on the heels of the union's previous assertion that it would cost \$300.00 to join, was an inducement which, coupled with the threats to continued employment, should cause the Board to doubt whether the membership evidence filed was a true expression of the wishes of employees. The Board concurred with counsel's characterization of the initiation fee as an inducement but held that the surrounding circumstances were not intimidating, coercive or threatening. Two-tier initiation fee structures are customarily used by trade unions in organizing employees and are not *per se* unlawful. The Board further found that any misrepresentations caused by the union organizer's initial mistake were explained by him as soon as he became aware of the correct facts. The totality of the evidence indicated that when the employees signed the application cards and paid the initiation fee they were aware of the nature and purpose of the membership applications and the \$5.00 payment. The Board therefore held that the membership evidence was a true and voluntary expression of the wishes of the employees. *Covello Brothers Limited*, [1989] OLRB Rep. Feb. 119.

Not critical that an applicant for certification establish a technically satisfactory constitutional continuum if it has been in existence a long time

In this certification case the employer had recognized the applicant, the Society of Ontario Hydro Professional and Administrative Employees ("the Society") as the representative body for a group of employees for several years. This decision considered two issues: whether the Society was a trade union, as defined by clause 1(1)(p) of the Act, and whether section 13, which prohibits certification of a union if any employer has participated in its formation or administration or has contributed support, prevented certification of the Society.

The respondent argued, and the Board agreed, that there was not evidence sufficient to show that the applicant was a continuation of the organization which had been found to be a trade union in a 1947 certification decision. However the issue here was whether the applicant was a 'trade union' at times material to the instant application for certification. The Board explained that when an organization's formation is followed almost immediately by an application for certification, the Board's close attention to the steps taken to create the organization is a natural consequence of the fact that there will be no other substantial evidence of the existence of the organization. When faced with an organization which claims to have been in existence for a considerable period of time, however, the Board has recognized that it will be less critical to focus on the steps originally taken to bring the organization into existence. It follows that it will not be critical to the Board's finding it to be a trade union that an applicant establish a technically satisfactory constitutional continuum from its date of origin to the present day. The evidence was that a great many people have for many years conducted themselves as though the Society were an organization which had long ago been formed and did have members who were governed by the terms of a constitutional document which could be identified without dispute. There was no evidence that this common premise or any action taken on the basis of it was ever challenged in a timely way. Thus the Board found the applicant was an "organization". Moreover, the Board held it could not make a ratification vote on the union's constitution, or similar formalities, a prerequisite to trade union status. The respondent further argued that the applicant was not a trade union because a trade union must be an organization of employees only, and in determining whether the applicant was a trade union the Board proceeded on the assumption that disputed individuals would be found "managerial". However, the Board followed the reasoning used in *Board of Education for the City of York*, [1984] OLRB Rep. Sept. 1279, where the Board held that merely the presence of managerial

persons within the membership would not disqualify the union as a trade union within the meaning of the Act. The Board found that the Society was a “trade union”.

Would section 13 prohibit certification? The respondent alleged employer support had been given in two forms. One was the involvement in the union’s affairs, both generally and in the card-signing campaign in particular, of persons alleged to exercise managerial functions. Neither the respondent nor a certain group representing objecting employees (‘the Coalition’) expressly described any allegedly managerial person as having engaged in supportive conduct *on behalf of* Hydro or any other named employer. The respondent had argued that the activities of the managerial persons were nevertheless activities of the employer as a matter of law simply by virtue of the fact those activities were done by managerial persons. The Coalition argued that the activities of those persons amounted to employer support because they would be perceived as members of management and so would have undue influence over the expression by employees of their wishes. The Board found that no one was acting on behalf of, or in the interests of, Hydro when they participated in the union’s affairs. The Board applied the analysis in *Children’s Aid Society of Metropolitan Toronto*, [1976] OLRB Rep. Nov. 651, where the Board held that a finding of managerial function under section 1(3)(b) in respect of person(s) who actively participate in the formation of the trade union does not in and of itself activate section 13 of the Act. Rather a finding of managerial status in respect of these persons must be coupled with evidence which establishes that they were acting on behalf of or in the interests of the employer.

Hydro had provided, free of charge, several privileges to the union, including access to the internal mail system, certain bulletin boards, the auditorium and meeting rooms. As well, members of the union’s executive and delegates were permitted to take time off, without loss of salary or benefits, to attend union activities. The union used Hydro facilities in connection with its bid for certification. The employer argued that the above privileges were illegal as constituting employer support because they were not provided for in a collective agreement, a requirement for protection under section 46. The Board disagreed that the privileges were illegal, noting that such employer assistance is not seen as “employer support” when it is the result of “arm’s length” dealings which occur after the assisted organization has established support among the affected employees. Such was the nature of the dealings in this case. In the result there was no employer support that would activate section 13. *Ontario Hydro*, [1989] OLRB Rep. Feb. 185.

Carpenters Union permitted to carve out its craft from concrete forming agreement

In this case the Carpenters’ Union, Local 27 (“Local 27”) sought, in an application made pursuant to section 144(3) of the Act, to be certified as the bargaining agent for its standard non-ICI craft unit, namely, carpenters and carpenters’ apprentices employed by Ellis-Don Limited (“the employer”) in all sectors of the construction industry, except the ICI, in Board Area 8. The employer’s carpenters and carpenters’ apprentices who were engaged in concrete forming in the residential sector of the construction industry in Board Area 8 and the County of Simcoe were already represented by the Form Work Council under a Form Work style collective agreement (the “Ellis-Don Form Work style agreement”). Accordingly, this was a partial displacement application. Local 27 argued that it should be permitted to “carve out” its craft or trade from the bargaining unit defined by the Form Work style agreement between Ellis-Don and the Form Work Council.

The Board held that the general practice in the construction industry is to permit a craft construction trade union to apply and be certified for a bargaining unit of employees engaged in its craft, whether or not such employees are in an existing bargaining unit represented by another trade union at the time of the application. This practice in the construction industry contrasts with the practice in non-construction cases where the Board on a displacement application generally

finds the appropriate bargaining unit to be described in the same terms as the existing unit. The Board noted that the possibility of fragmentation and jurisdictional disputes weighed against permitting Local 27 to carve out carpenters and carpenters' apprentices. On the other hand, the Ellis-Don Form Work style agreement was limited in its application to concrete forming construction in the residential sector in Board Area 8 and the County of Simcoe. Further, the classification schemes in the agreement suggested that members of crews performing concrete forming construction did not exercise so similar a combination of skills as to be entirely interchangeable. The fact that employees work in composite crews does not mean carpenters cannot be distinguished from labourers, even when the work in question falls within the overlap between the two trade jurisdictions. The Board observed, moreover, that the employee's right of self-determination favoured permitting craft carve outs in a craft oriented industry. Precluding craft carve outs could severely limit the opportunity for tradesmen to opt for representation by their craft union in circumstances where some other trade union has previously obtained bargaining rights including that craft. The *Labour Relations Act* itself recognizes the craft nature of the construction industry. Section 6(3) deems craft units to be appropriate and in the ICI sector craft carve outs are mandatory in applications for certification to which section 144(1) of the Act applies. Similarly, section 144(3), the section pursuant to which Local 27 brought its application, deems the craft unit proposed by Local 27 to be appropriate for collective bargaining. This is so whether or not the craft employees in question happen to be in a bargaining unit represented by another trade union at the time the application is made. In the result, the Board held that the nature and history of organization in the construction industry and the right of self-determination favoured permitting Local 27 to carve out the carpenters and carpenters' apprentices represented by the Form Work Council under the Ellis-Don Form Work style agreement. *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254. The Board subsequently dismissed three requests for reconsideration filed by the respondents. *Ellis-Don Limited*, [1989] OLRB Rep. March 234.

Board has power to enforce payment of conduct money

In this case the union argued that the employer's failure to pay conduct money to two bargaining unit employees upon whom it had served summonses amounted to an unfair labour practice. The union characterized the employer's action as imposing a financial penalty on the employees by reason of their connection with and support of the trade union, in furtherance of the employer's overall scheme to destroy the union. The union requested as a remedy that the employer be made to comply with its legal obligation to pay conduct money.

The Board declined to address the non-payment of conduct money from the perspective of the unfair labour practice sections of the Act, but held that it had the authority to direct payment of conduct money without making a finding that an unfair labour practice had been committed. The Board reviewed its powers to summons and compel the attendance of witnesses under both the *Labour Relations Act* (the "LRA") and the *Statutory Powers Procedure Act* (the "SPPA") and its power to determine its own practice and procedure under the LRA. The Board held that while neither the LRA nor the SPPA expressly confers on the Board the power to enforce payment of conduct money, this power must be a concomitant of the express power to summons and compel attendance of witnesses. Since it is part of the Board's process that conduct money be paid by the parties who request and effect service of a summons, it is, arguably, an abuse of the Board's process to use a summons without discharging the corresponding obligation to pay the conduct money. The Board held in the alternative that if the power to enforce payment of conduct money was not implicit in the Board's powers to summons and compel the attendance of witnesses and determine its own practice and procedure, then such a power flowed from subsection 23(1) of the SPPA. That subsection empowers a tribunal to make such orders as it considers proper to prevent abuse of its processes. The Board held that there was no doubt as to the potential for abuse of the

Board's processes by the use of its summonses. In order to ensure that such an abuse had not and would not occur in relation to the Board's proceedings, the Board found it appropriate to direct that conduct money owing to the two employees as a result of the employer's use of the Board's summons be paid forthwith together with interest thereon. *Hamilton Automatic Vending Company Limited*, [1989] OLRB Rep. Mar. 248.

Board considering whether union's refusal to give a complainant a copy of a grievance can amount to a breach of the Act

In this section 68 duty of fair representation case the employee alleged that the union's refusal to take two grievances to arbitration, and refusal to provide the complainant with a copy of one of the grievances, constituted violations of the Act. One of those grievances related to a matter arising in 1978; the Board declined to inquire into that aspect of the complaint because of the complainant's excessive delay in raising the matter. The Board found the union's decision not to pursue the second grievance to arbitration was reasonable under the circumstances. After the union had advised the complainant of its decision to withdraw the latter grievance, the complainant began to make requests for a copy of that grievance. At the end of the several months the complainant spent trying to get a copy of his grievance, the only reason the union's vice president gave for refusing a copy was that the original was the property of the union. There was no evidence that providing a copy would have involved any significant effort or expense on the union's part. The Board described the union's refusal as arbitrary action, perhaps even action in bad faith and noted that in an appropriate case a union's refusal to provide a worker it represents with a copy of a grievance it has filed on his or her behalf violates section 68. As a practical matter, however, complaints about a trade union's failure to provide information about its activities on behalf of employees tend to arise when there are suspicions or allegations that the activities themselves involve a breach of the Act. The propriety of the activities generally becomes the real focus of attention, as it did in this case. If the complaint fails on that issue the matter of the initial failure of communication can take on an almost academic quality as it did in this case. Even if the denial of a copy of the grievance violated section 68, that caused the complainant no loss for which he should be compensated. Not even nominal damages would be awarded because the complainant had failed to renew his request at certain meetings with union officials. As well, for that same reason and because the union had since changed its policy with respect to providing copies of grievance documents, a cease and desist direction or other remedy with prospective effect would not be granted. Under these circumstances the Board declined to pronounce on whether or not the union's refusal to provide a copy of the grievance amounted to a breach of the Act. *Balford Lindsay*, [1989] OLRB Rep. Mar. 264.

Board not bound to consider whether the respondent to a construction industry grievance was a construction industry employer within the meaning of the Act

The union had referred a construction industry grievance under section 124 to the Board alleging that Metropolitan Toronto ("Metro") had breached the collective agreement by which it was bound by contracting for the performance of electrical work with a contractor who was not party to a collective agreement with the union or any of its locals. The provision in question prohibited Metro from directly or indirectly 'subletting' any work to an employer who was not a party to an agreement with the union. Metro entered into a contract with Torontario Mechanical and Electrical Company Limited ("Torontario") for the performance of electrical work. Torontario was not a party to the provincial agreement. Metro argued that in these circumstances it was not an "employer" in the construction industry within the meaning of section 117(c) of the Act but rather an owner and therefore not bound by the provincial agreement and, in any event, the work was not "sublet". The Board held that it was not bound to consider whether a respondent to a

section 124 proceeding was acting as a person operating a business in the construction industry in respect of the subject matter of the grievance but only whether the respondent's activities had violated the provincial agreement. The question whether Metro was both "an employer" in the literal sense and "a person who operates a business in the construction industry" in the sense intended by clause 117(c) of the Act was a relevant question when the union made its application for certification. However, it was not a relevant question during the currency of the collective bargaining relationship except to the extent that a resulting collective agreement made the question or any aspect of it relevant. Once Metro has been found to be an employer as defined in section 117(c), the applicability of the collective agreement to any particular situation would thereafter be determined by the terms to which the parties had agreed. The Board stated that if it was wrong in this and if it must determine on each section 124 proceeding that the employer was a person who operated a business in the construction industry, then the respondent satisfied that test in this case. The phrase "operates a business in the construction industry" described anyone who effects construction, whether by hiring construction workers or by engaging contractors. Here, Metro effected construction. The grievance was dismissed because Metro's contract with Toronto was not in substance a "subcontract". *The Municipality of Metropolitan Toronto*, [1989] OLRB Rep. Mar. 279.

VI COURT ACTIVITY

During the year under review, the Courts dealt with nine applications for judicial review, and dismissed all nine.

In one of the applications for judicial review which were dismissed by the Divisional Court, the applicant sought and obtained leave to appeal to the Court of Appeal, and that appeal is pending.

Two applications for judicial review were withdrawn or abandoned by the applicants in the year under review.

Two applications to stay Board proceedings pending judicial review applications were both dismissed.

Fifteen other applications for judicial review are pending as at year-end. Five applications for leave to appeal the dismissals of judicial review applications, as well as four appeals, three to the Court of Appeal and one to the Supreme Court of Canada, are also pending.

The following are brief summaries of matters involving the Labour Relations Board which went to Court during the fiscal year.

Atway Transport Inc.

**Supreme Court of Ontario, Divisional Court
May 30, 1988; Unreported**

The union filed a complaint alleging that the employer had dismissed an employee for union activity and in order to intimidate other employees. The employer responded that the individual involved was not an employee but an independent contractor.

During the course of hearing evidence on the issue of whether or not the individual was an employee, the Board made several evidentiary rulings which were recorded in its decision dated April 12, 1988. The Board ruled that certain photocopies which the respondent sought to introduce were inadmissible. The Board also ordered the production by the employer of certain payroll documents and contracts which the union had requested in a summons to witness. The Board held that these documents were arguably relevant to the issue under consideration and that there is always an implied undertaking, and in this case there was an explicit one, that documents produced will be used only for the purposes of the proceeding.

The employer sought judicial review of the Board's decision on the grounds of numerous errors of law and denial of natural justice, as well as violations of the Charter provisions respecting fundamental justice (section 7) and unreasonable search and seizure (section 8). It also sought a stay of the Board's decision and of any further proceedings at the Board pending the disposition of the application for judicial review.

On May 30, 1988, the Divisional Court dismissed the application for a stay, on the basis that it was not satisfied that there was any merit to the employer's application for judicial review.

The application for judicial review is still pending as at year-end.

Cuddy Chicks**Supreme Court of Ontario, Divisional Court****November 2, 1988; 66 O.R. (2d) 284; 33 Admin. L.R. 304; 88 CLLC ¶14,053****Ontario Court of Appeal****January 16, 1989; Unreported**

The union applied for certification of employees at the employer's hatchery. The employer asserted in reply that the employees were employed in agriculture and therefore not covered by the *Labour Relations Act* by virtue of section 2(b). The union responded that the agricultural exemption is contrary to the Charter and should therefore not be applied in any event. The employer then objected that the Board had no jurisdiction to consider the union's Charter argument.

The Board in its oral decision of April 28, 1988, with written reasons issuing May 6, 1988, held first that the employees were employed in agriculture. The majority of the Board went on to decide that the Board does have jurisdiction to apply the Charter in proceedings before it by virtue of its obligation under section 52 of the Charter to apply the *Labour Relations Act* in a manner consistent with the Charter and by virtue of its being a "court of competent jurisdiction" within the meaning of section 24(1) of the Charter with respect to matters before it.

The employer sought judicial review of the Board's decision that it has jurisdiction to apply the Charter on the grounds that the Board is not a court of competent jurisdiction under section 24(1) and that section 52 is not an independent source of jurisdiction.

The Divisional Court, in its decision dated November 2, 1988, held that the Board was correct in holding that it has jurisdiction to apply the Charter. The Court held that the Board is a court of competent jurisdiction under section 24(1) with respect to matters before it, and has jurisdiction to apply the Charter by virtue of section 52 and by virtue of the Board's common law duty to apply statutes to proceedings before it. The application for judicial review was therefore dismissed.

Cuddy Chicks sought leave to appeal, which was granted by the Court of Appeal on January 16, 1989.

Dellbrook Homes**Supreme Court of Ontario, Divisional Court****March 13, 1989; [1989] OLRB Rep. March 315**

The Carpenters Union complained that the Labourers Union had interfered with its rights and those of employees by negotiating collective agreements which contained clauses requiring home builders to subcontract carpentry work only to carpentry contractors who were in contractual relations with the Labourers, notwithstanding that they did not represent any carpenters employed by the home builders. The Labourers and the employers responded that the complaints should be dismissed on the basis of delay and abuse of process.

The Board in its decision dated February 7, 1988 exercised its discretion to decline to enquire into the complaints and dismissed them. The Board found that the delay in bringing these complaints was unreasonable and that the other parties would be substantially prejudiced if the complaints were allowed to proceed.

The Carpenters sought judicial review of the Board's decision on the grounds that the Board had wrongfully declined jurisdiction and denied natural justice by refusing to enquire into the complaints. They alleged that the Board had also wrongfully exercised its discretion when it

declined to enquire into a complaint that it had taken irrelevant considerations into account, found prejudice without any evidence in support and attributed responsibility for its own delay to the Carpenters.

The Divisional Court on March 13, 1989 dismissed the application for judicial review, finding that the Board had sufficient evidence before it and gave sufficient grounds in its decision for exercising its discretion not to hear the complaint.

Extendicare Health Services Inc.
Supreme Court of Ontario, Divisional Court
May 3, 1988; Unreported

The Ontario Nurses Association (“ONA”) complained that the employer had bargained in bad faith by concluding an agreement with a local of ONA which did not provide for wage parity with nurses in hospitals, when the employer had known that the union’s central office signed all contracts and would not accept less than wage parity with hospital nurses. Extendicare countered that ONA had bargained in bad faith by refusing to acknowledge the agreement between it and the local. The union also alleged that the employer, in implementing the terms of the invalid contract, had violated the Act by altering working conditions during bargaining, and it requested the appointment of a conciliation officer.

The Board found that the employer had bargained in bad faith by entering into a contract with the local which it knew the local had no authority to sign. The document was therefore not a collective agreement and ONA had been entitled to refuse to acknowledge it. Furthermore, the Board found that the employer had violated the freeze provisions of the Act and that, as there was no collective agreement, the Minister had the authority to appoint a conciliation officer.

Extendicare sought judicial review of the Board’s decision on the grounds that the Board had committed jurisdictional errors by failing to consider relevant evidence.

On May 3, 1988 the Divisional Court dismissed the application for judicial review, noting that there was no indication that the Board had failed to consider relevant evidence, in particular, the old collective agreement.

Great Lakes Fisheries and Allied Workers’ Union
Supreme Court of Ontario, Divisional Court
November 23, 1988; Unreported

The union had filed numerous applications for certification of fishermen working on boats. Nine of the employers named in the certification applications had then applied to Weekly Court for a determination of the constitutional validity of the Board’s considering the certification applications and for a declaration that the fishermen came within federal jurisdiction. On September 5, 1986 the court dismissed the application as premature, as the Board, with its expertise in labour relations, had not yet heard the evidence and ruled on the constitutional issue.

Meanwhile, the Board proceeded to consider the constitutional issue, which the employers had also raised in their replies to the certification applications. The Board decided that labour relations respecting these fishing boat crews came within provincial jurisdiction and that therefore the Board had jurisdiction to hear the applications.

The nine employers then sought judicial review of the Board’s decision on the ground that it had no jurisdiction to entertain the certification applications since labour relations respecting these fishermen came within federal jurisdiction.

The Divisional Court on November 23, 1988 ruled that the Board had been correct in its decision, and for the reasons it gave, and dismissed the application for judicial review.

The employers are now seeking leave to appeal the Divisional Court's decision to the Court of Appeal, and that appeal is pending as at year-end.

KBM Forestry Consultants Inc.
Supreme Court of Ontario, Divisional Court
April 25, 1988; Unreported

The Ontario Public Service Employees Union ("OPSEU") sought a declaration pursuant to the *Successor Rights (Crown Transfers) Act* that there had been a transfer of an undertaking from the Crown to KBM with respect to certain harvesting work which had previously been performed by employees represented by the union and which the Ministry of Natural Resources had subcontracted to KBM.

The majority of the Board declared that there had been a transfer from the Crown to KBM of work which had been performed by employees represented by the union and that therefore KBM was bound by the collective agreement between the Crown and the union.

The Crown brought an application for judicial review of the Board's decision on the grounds that the Board had made various errors of law in finding that there was a transfer of an undertaking under the *Successor Rights (Crown Transfers) Act*.

The Divisional Court on April 25, 1988 dismissed the application for judicial review, holding that the Board's finding of a transfer was not patently unreasonable.

Knob Hill Farms Limited; Donna Baydak
Supreme Court of Ontario, Divisional Court
May 30, 1988; 10 A.C.W.S. (3d) 221

The United Food and Commercial Workers Union ("UFCW") applied for certification for employees of Knob Hill. The union also alleged that the employer had interfered with the union and with employees' rights and intimidated employees by means of lay-offs and wage increases, and the union sought certification under section 8 of the *Labour Relations Act* on the basis that the employer's contraventions of the Act made it unlikely that the true wishes of the employees could be ascertained. The employer argued that section 89(5) of the Act, which places the burden of proof on the employer in such complaints, is contrary to the equality of provisions of the Charter. A group of objecting employees, represented by Ms. Baydak, had filed a petition in opposition to the union.

The majority of the Board ruled that the reverse onus provisions of the Act do not violate the Charter, and in any event found the employer to have contravened the *Labour Relations Act* without relying on the reverse onus. The Board, having determined that it was not satisfied that the petition was voluntary, determined that the union had adequate support and that the employer's contraventions had resulted in a situation in which the employee's wishes were not likely to be ascertained. The Board therefore determined that this was an appropriate case in which to certify the union pursuant to section 8, and ordered various remedies for the unfair labour practices. A request for reconsideration of this decision was denied by the same majority.

Both Knob Hill and Ms. Baydak (on behalf of the objecting employees) sought judicial review of the Board's decision, the former on the grounds of various errors of law and patently unreasonable decisions, and the latter on the grounds that the Board had denied natural justice by

misleading Ms. Baydak as to the relevant evidence and issues and had erred in failing to find the reverse onus to be in violation of the Charter.

Knob Hill sought a stay of the Board's decision pending the disposition of the judicial review and requested that the two judicial reviews be heard together.

The Divisional Court on May 30, 1988 dismissed the application for a stay and directed that the two judicial reviews would be heard together. In its reasons issued June 6, 1988, the Court noted that there was no strong *prima facie* case in the judicial review application, as the issues raised were evidentiary matters within the Board's exclusive jurisdiction.

The applications for judicial review were both pending as at year-end.

Douglas Lloyd

**Supreme Court of Ontario, Divisional Court
March 9, 1989; [1989] OLRB Rep. March 316**

Douglas Lloyd complained that he had been penalized by the Ministry of Community and Social Services for acting in compliance with the *Occupational Health and Safety Act* contrary to section 24 of that Act. A youth services officer at a secured custody facility, he had refused to report to work at another location at the facility because he believed that he would be leaving the remaining employees in jeopardy due to understaffing. The employer had reprimanded him and withheld his pay for the balance of the shift worked after the refusal.

The Board in its decision noted that by section 23(1)(c), section 23, including the right to refuse unsafe work, does not apply to persons employed in the operation of a correctional facility, and that therefore Mr. Lloyd could not rely on section 23 to refuse to work. The majority held that section 17, which prohibits a worker from working in a manner which might endanger himself or others, does not indirectly give a right to refuse an instruction. The majority also held that this was not an appropriate case in which to exercise its discretion under section 24(7) to substitute a different penalty. The complaint was therefore dismissed.

Mr. Lloyd sought judicial review of the Board's decision on the grounds that the Board erred in law and declined jurisdiction by finding that he was not protected by section 24 and exceeded its jurisdiction in its interpretation of the Act. He also alleged that section 23(1)(c), by which he was excluded from the application of the right to refuse work provisions, was contrary to the equality provisions of the Charter.

The Divisional Court on March 9, 1989 dismissed this application for judicial review. The Court found that the Board's interpretation of the legislation was not patently unreasonable. The Court also held that section 23(1)(c) does not infringe the equality provisions of the Charter. The section does not relate to personal characteristics and meets a legitimate government objective in any event. The Court explicitly left open the issue of whether it would as a general rule hear Charter issues not raised before the tribunal, noting that normally on such issues the Court requires a factual record from the tribunal.

Ontario Hydro

**Supreme Court of Ontario, Divisional Court
September 1, 1988; Unreported**

The Electrical Power Systems Construction Association referred a grievance in the construction industry to the Board, seeking recovery from the Ironworkers Union of money paid to an employee pursuant to an inaccurate declaration regarding room and board allowance. The

union responded that the employer could not recover through the union and that the grievance was untimely in any event as the 30 day time limit in the collective agreement for filing a grievance had expired.

The Board considered the evidence respecting the three year period between the discovery of the overpayment and the filing of the grievance, and concluded that the employer's delay in filing was considerable and not justified. The Board therefore declined to exercise its statutory discretion to extend the time limit in the collective agreement for initiating grievances and, finding the grievance to be untimely, dismissed the application.

The Association and Ontario Hydro sought judicial review of the Board's decision on the grounds that the Board had erred in finding that the delay resulting from Ontario Hydro pursuing the matter through the courts was unreasonable and in refusing to extend the time for filing the grievance.

The Divisional Court on September 1, 1988 dismissed the application for judicial review, noting that while the court would not necessarily have reached the same conclusion, it was not persuaded that the Board's refusal of the extension was so patently unreasonable as to amount to a loss of jurisdiction.

The City of Sault Ste. Marie
Supreme Court of Ontario, Divisional Court
October 5, 1988; Unreported

The Labourers Union applied to be certified to represent employees of the city and the Canadian Union of Public Employees and the Carpenters Union intervened. At the Board's hearing, no one appeared on behalf of the city.

The Board in its decision dated August 7, 1987 certified both the Labourers and the Carpenters pursuant to the construction industry provisions of the *Labour Relations Act*.

Counsel for the city subsequently requested that the Board conduct a hearing to reconsider its decision on the basis that he had failed to appear as he had erroneously assumed as a result of communications with the Board that there would be no hearing on the scheduled date. The Board received written submissions from the parties and in its decision of October 9, 1987 found that the city had received a notice of hearing and that counsel's failure to attend was due to his own unwarranted and false assumption. The Board declined to reconsider its earlier decision.

The city sought judicial review of the Board's decisions on the grounds that the Board made various errors of law and denied the city natural justice by proceeding in its absence and then refusing to hold a reconsideration hearing. It also alleged that sections 117 to 136 of the *Labour Relations Act* should not have been applied to a municipal corporation since that would result in the municipality being bound to a contract which might be inconsistent with the *Municipal Act*, and that furthermore these sections violate the equality provisions of the Charter.

The Divisional Court on October 5, 1988 dismissed the application for judicial review. The Court held that the bulk of the responsibility for counsel for the city's failure to appear at the hearing was his own, as he had wrongly assumed that the hearing dates had been changed. The Court was not satisfied that the two unions would not be prejudiced if the decisions were quashed, and so declined to exercise its discretion to grant the application.

The city is seeking leave to appeal to the Court of Appeal, which application is scheduled at year-end for April 3, 1989.

The Board of Education for the City of Windsor
Supreme Court of Ontario, Divisional Court
January 25, 1989; [1989] OLRB Rep. February 231

The Plumbers Union referred to the Board two construction industry grievances, alleging that the Windsor Board had violated the provincial agreement with respect to wages and non-union contracting-out. The employer responded that it was not bound by the provincial agreement because it was not an employer in the construction industry, because it contracted the work out as an owner, and because the work was not construction work but maintenance work. In any event, if it was bound by the provincial agreement, the union was estopped from enforcing the provincial agreement because of a “gentlemen’s agreement” between it and the union that the union would set aside its contracting-out rights under the provincial agreement.

In its decision dated March 4, 1988, the majority of the Board found that the Windsor Board was an employer in the construction industry with respect to the work at issue in the grievances and was therefore bound to the provincial agreement. The “gentlemen’s agreement” which purported to set aside the provincial agreement’s provisions was found to be null and void pursuant to section 146(2) of the *Labour Relations Act* as being an “arrangement... other than a provincial agreement”, and the union was therefore not estopped from grieving the non-union contracting-out. The Board then dealt with the grievances, and found violations of the wage and contracting-out provisions of the provincial agreement.

The Windsor Board sought judicial review of the Board’s decision on the grounds, among others, that the Board erred in finding it to be an employer in the construction industry and in refusing to apply the doctrine of estoppel.

The Divisional Court, in its decision dated January 25, 1989, held that the Board’s findings were not unreasonable or for that matter wrong, and dismissed the application for judicial review.

The Windsor Board is seeking leave to appeal the Divisional Court’s decision to the Court of Appeal, which application is pending as at year-end.

VII CASELOAD

In fiscal year 1988-89, the Board received a total of 3,225 applications and complaints, a decrease of 10 percent over the intake of 3,583 cases in 1987-88. Of the three major categories of cases that are brought to the Board under the Act, applications for certification of trade unions as bargaining agents decreased by 17 percent over last year, contravention of the Act decreased by 9 percent and referrals of grievances under construction industry collective agreements decreased by 15 percent. The total of all other types of cases increased by 5 percent. (Tables 1 and 2).

In addition to the cases received, 1,006 were carried over from the previous year, for a total caseload of 4,231 in 1988-89. Of the total caseload, 2,856 or 68 percent, were disposed of during the year; proceedings in 448 were adjourned sine die (without a fixed date for further action; The Board regards sine die cases as disposed of, although they are kept on docket for one year) at the request of the parties; and 927 were pending in various stages of processing at March 31, 1989.

The total number of cases processed during the year produced an average workload of 282 cases for the Board's full-time chair and vice-chair, and the total disposition represented an average output of 190 cases.

Labour Relations Officer Activity

In 1988-89, the Board's labour relations officers were assigned a total of 2,063 cases to help the parties settle differences between them without the necessity of formal litigation before the Board. The assignments comprised 49 percent of the Board's total caseload, and included 486 certification applications, 37 cases concerning the status of individuals as employees under the Act, 695 complaints of alleged contravention of the Act, 739 grievances under construction industry collective agreements, 104 complaints under the *Occupational Health and Safety Act*, and 2 complaints under the *Environmental Protection Act*. (Table 3).

The labour relations officers completed activity in 1,432 of the assignments, obtaining settlements in 1,277, or 89 percent. They referred 155 cases to the Board for decisions; proceedings were adjourned sine die in 287 cases; and settlement efforts were continuing in the remaining 344 cases at March 31, 1989. Labour relations officers were also successful in having hearings waived by the parties in 172, or 74 percent, of 232 certification applications assigned for this purpose.

Representation Votes

In 1988-89, the Board's returning officers conducted a total of 239 representation votes among employees in one or more bargaining units. Of the 239 votes conducted, 169 involved certification applications, 69 were held in applications for termination of existing bargaining rights, and 1 was taken in successor employer applications. (Table 5).

Of the certification votes, 120 involved a single union on the ballot; 46 involved two unions, 2 involved three unions, and one involved two unions with a 'no union' choice. Of the two-union and three-union votes, 93 percent entailed attempts to replace incumbent bargaining agents.

A total of 14,049 employees were eligible to vote in the 239 elections that were concluded, of whom 10,516, or 75 percent, cast ballots. Of those who participated, 54 percent voted in favour of

union representation. In the 120 elections that involved a single union, 75 percent of the eligible voters cast ballots, with 50 percent of the participants voting for union representation. In the elections involving three unions, 100 percent of the eligible voters cast ballots for union representation.

In the 69 votes in applications for termination of bargaining rights, 86 percent of the eligible voters cast ballots, with only 27 percent of those who participated voting for the incumbent unions.

Last Offer Votes

In addition to taking votes ordered in its cases, the Board's Registrar was requested by the Minister to conduct votes among employees on employers' last offer for settlement of a collective agreement dispute under section 40(1) of the Act. Although the Board is not responsible for the administration of votes under that section, the Board's Registrar and field staff are used to conduct these votes because of their expertise and experience in conducting representation votes under the Act.

Of the 12 requests dealt with by the Board during the fiscal year, votes were conducted in 7 situations, settlements were reached in 4 cases before a vote was taken, and 1 case was withdrawn.

In the 7 votes held, employees accepted the employer's offer in 2 cases by 16 votes in favour to 11 against, and rejected the offer in 5 cases by 1,648 votes against to 697 in favour.

Hearings

The Board held a total of 1,091 hearings and continuation of hearings in 1,321, or 31 percent of the 4,231 cases processed during the fiscal year. This was an increase of 61 sittings from the number held in 1987-88. One hundred and forty one of the hearings were conducted by vice-chair sitting alone, compared with 187 in 1987-88.

Processing Time

Table 7 provides statistics on the time taken by the Board to process the 2,856 cases disposed of in 1988-89. Information is shown separately for the three major categories of cases handled by the Board - certification applications, complaints of contraventions of the Act, and referrals of grievances under construction industry collective agreements - and for the other categories combined.

A median of 43 days was taken to proceed from filing to disposition for the 2,856 cases that were completed in 1988-89, the same as in 1987-88. Certification applications were processed in a median of 36 days, compared with 43 in 1987-88; complaints of contravention of the Act took 64 days, the same as 1987-88; and referrals of construction industry grievances required 15 days, the same as in 1987-88. The median time for the total of all other cases increased to 85 days from 71 in 1987-88.

Sixty-eight percent of all dispositions were accomplished in 84 days (3 months) or less, compared with 79 percent for certification applications, 59 percent for complaints of contraventions of the Act, 81 percent for referrals of construction industry grievances, and 50 percent for the total of all other types of cases. The number of cases requiring more than 168 days (6 months) to complete was 449, one case less than in 1987-88.

Certification of Bargaining Agents

In 1988-89, the Board received 938 applications for certification of trade unions as bargaining agents of employees, a decrease of 187 over 1987-88. (Tables 1 and 2).

The applications were filed by 88 trade unions, including 21 employee associations. Thirteen of the unions, each with more than 20 applications, accounted for 70 percent of the total filings: Canadian Auto Workers (41 cases), Public Employees (CUPE) (42 cases), Food and Commercial Workers (31 cases), Ontario Public Service Employees (23 cases), Retail Wholesale Employees (32 cases), Service Employees Intl. (49 cases), United Steelworkers (56 cases), Carpenters (65 cases), Intl. Operating Engineers (56 cases), Labourers (139 cases), Ontario Nurses Association (35 cases), Plumbers (27 cases) and Teamsters (61 cases). In contrast, 35 percent of the unions filed fewer than 5 applications each, with thirteen making just one application. These unions together accounted for 3 percent of the total certification filings. (Table 8).

Table 9 gives the industrial distribution of the certification applications received and disposed of during the year. Non-manufacturing industries accounted for 79 percent of the applications received, concentrated in construction (313 cases), education and related services (48 cases), health and welfare services (148 cases), accommodation and food services (33 cases), retail trade (35 cases), wholesale trade (22 cases), and transportation (27 cases). These seven groups comprised 84 percent of the total non-manufacturing applications. Of the 197 applications involving establishments in manufacturing industries, 83 percent were in nine groups: food and beverage (16 cases), metal fabricating (28 cases), wood (14 cases), non-metallic minerals (29 cases), transportation equipment (21 cases), electrical products (13 cases), printing and publishing (19 cases), rubber and plastics (12 cases) and other manufacturing (12 cases).

In addition to the applications received, 272 cases were carried over from last year, making a total certification caseload of 1,210 in 1988-89. Of the total caseload, 944 were disposed of, proceedings were adjourned sine die in 39 cases, and 227 cases were pending at March 31, 1989. Of the 944 dispositions, certification was granted in 649 cases including 25 in which interim certificates were issued under section 6(2) of the Act, and 3 that were certified under section 8; 129 cases were dismissed; proceedings were terminated in 4 cases; and 162 cases were withdrawn. The certified cases represented 69 percent of the total dispositions. (Table 1).

Of the 782 applications that were either certified, dismissed or terminated, final decisions in 145 cases were based on the results of representation votes. Of the 145 votes conducted, 103 involved a single union on the ballot; 39 were held between two unions; two involved three unions and one involved two unions with a "no union" choice. Applicants won in 79 of the votes and lost in the other 66. (Table 6).

A total of 10,786 employees were eligible to vote in the 145 elections, of whom 7,803 or 72 percent cast ballots. In the 79 votes that were won and resulted in certification, 4,259 or 69 percent of the 6,174 employees eligible to vote cast ballots, and of these voters 2,986 or 70 percent favoured union representation. In the 66 elections that were lost and resulted in dismissals, 3,544 or 77 percent of the 4,612 eligible employees participated, and of these only 36 percent voted for union representation.

Size and Composition of Bargaining Units: Small units continued to be the predominant pattern of union organizing efforts through the certification process in 1988-89. The average size of the bargaining units in the 649 applications that were certified was 30 employees, compared with 36 in 1987-88. Units in construction certifications averaged 7 employees, the same as in 1987-88; and in non-construction certifications they averaged 40 employees, compared with 52 in 1987-88. Seventy-nine percent of the total certification applications involved units of fewer than 40

employees, and 44 percent applied to units of fewer than 10 employees. The total number of employees covered by the 649 certified cases decreased to 21,440 from 27,085 in 1987-88. (Table 10).

Of the employees covered by the applications certified, 7,016 or 33 percent, were in bargaining units that comprised full-time employees or in units that excluded employees working 24 hours or less a week. Units composed of employees working 24 hours or less a week accounted for 2,389 employees, found mostly in education and health and welfare services and represented mainly by teachers' unions and the Ontario Nurses Association. Full-time and part-time employees were represented in units covering 12,035 employees, including units that did not specifically exclude employees working 24 hours or less a week. (Tables 12 and 13).

Seventy-one percent of the employees, or 15,165, were employed in production, service and related occupations; and 1,227 were in office, clerical and technical occupations - mainly in education, and health and welfare services. Professional employees, found mostly in education and health and welfare services, accounted for 3,896 employees; a small number, 508 employees, were in sales classifications; and 644 were in units that included employees in two or more classifications. (Tables 14 and 15).

Disposition Time: A median time of 37 calendar days was required to complete the 649 certified cases from receipt to disposition. For non-construction certifications the median time was 38 days, and for construction certifications the median time was 30 days. (Table 11).

Eighty-three percent of the 649 certified cases were disposed of in 84 days (3 months) or less, 71 percent took 56 days (2 months) or less, 30 percent required 28 days (one month) or less, and 13 percent were processed in 21 days (3 weeks) or less. Forty-five cases required longer than 168 days (6 months) to process, compared with 63 in 1987-88.

Termination of Bargaining Rights

In 1988-89, the Board received 177 applications under sections 57, 59, 60, 61 and 123 of the Act, seeking termination of the bargaining rights of trade unions. In addition, 65 cases were carried over from 1987-88.

Of the total cases processed, bargaining rights were terminated in 102 cases, 41 cases were dismissed, 64 were withdrawn or settled, proceedings were terminated or adjourned sine die in 5 cases, and 30 cases were pending at March 31, 1989.

Unions lost the right to represent 1,615 employees in the 102 cases in which termination was granted, but retained bargaining rights for 5,158 employees in the 103 cases that were either dismissed or withdrawn.

Of the 143 cases that were either granted or dismissed, dispositions in 69 were based on the results of representation votes. A total of 1,455 employees were eligible to vote in the 69 elections that were held, of whom 1,221 or 84 percent cast ballots. Of those who cast ballots, 329 voted for continued representation by unions and 892 voted against. (Table 6).

Declaration of Successor Trade Union

In 1988-89, the Board dealt with 34 applications for declarations under section 62 of the Act concerning the bargaining rights of successor trade unions resulting from a union merger or transfer of jurisdiction, compared to 81 in 1987-88.

Affirmative declarations were issued by the Board in 21 cases, 1 case was withdrawn, 2 cases were dismissed, and 10 cases were pending at March 31, 1989.

Declaration of Successor or Common Employer

In 1988-89, the Board dealt with 329 applications for declarations under section 63 of the Act concerning the bargaining rights of trade unions of a successor employer resulting from a business sale, or for declarations under section 1(4) to treat two companies as one employer. The two types of request are often made in a single application.

Affirmative declarations were issued by the Board in 21 cases, 97 cases were either settled or withdrawn by the parties, 20 cases were dismissed, proceedings were terminated or adjourned sine die in 42 cases, and 149 cases were pending at March 31, 1989.

Accreditation of Employer Organizations

Eight applications were processed under sections 125 through 127 of the Act for accreditation of employer organizations as bargaining agents of employers in the construction industry. Two cases were granted and 6 cases were pending at March 31, 1989.

Declaration and Direction of Unlawful Strike

In 1988-89, the Board dealt with 5 applications seeking a declaration under section 92 against an alleged unlawful strike by employees in the construction industry. One case was dismissed, 3 cases were withdrawn or settled and proceedings were adjourned sine die in 1 case.

Thirty-eight applications were dealt with seeking directions under section 92 against alleged unlawful strikes by employees in non-construction industries. Directions were issued in 3 cases, 1 case was dismissed, 17 were withdrawn or settled, proceedings were terminated or adjourned sine die in 16 cases, and 1 case was pending at March 31, 1989.

Twenty-two applications were also processed seeking directions under section 135 of the Act against alleged unlawful strikes by construction workers. A direction was issued in 1 case, 12 were withdrawn or settled, proceedings were terminated or adjourned sine die in 5 cases, and 3 were pending at March 31, 1989.

Declaration and Direction of Unlawful Lock-out

Three applications were processed in 1988-89, seeking a declaration under section 93 of the Act against an alleged unlawful lock-out by construction employers. One was settled, one terminated, and one was pending at March 31, 1989.

One application was processed seeking a direction under section 93 of the Act against an alleged unlawful lock-out by a non-construction employer. It was withdrawn.

Consent to Prosecute

In 1988-89, the Board dealt with 10 applications under section 101 of the Act, requesting consent to institute prosecution in court against trade unions and employers for alleged commission of offences under the Act.

Of the 10 applications processed, which included 6 carried over from the previous year, 9 were disposed of and 1 was pending at March 31, 1989. Of the cases disposed of, 2 were dismissed, and 7 were settled or withdrawn.

Complaints of Contravention of Act

Complaints alleging contraventions of the Act may be filed with the Board for processing under section 89 of the Act. In handling these cases the Board emphasizes voluntary settlements by the parties involved, with the assistance of a labour relations officer.

The Board received 787 complaints under this section in 1988-89, a decrease of 81 cases over the 868 filed in 1987-88. In complaints against employers, the principal charges were alleged illegal discharge of or discrimination against employees for union activity in violation of sections 64 and 66 of the Act, illegal changes in wages and working conditions contrary to section 79, and failure to bargain in

good faith under section 15. These charges were made mostly in connection with applications for certification. The principal charge against trade unions was alleged failure to represent employees fairly in grievances against their employer.

In addition to the complaints received, 284 cases were carried over from 1987-88. Of the 1,071 total processed, 751 were disposed of, proceedings were adjourned sine die in 87 cases, and 233 cases were pending at March 31, 1989.

In 537, or 72 percent, of the 751 dispositions, voluntary settlements and withdrawals of the complaint were secured by labour relations officers (Table 4), remedial orders were issued by the Board in 29 cases, 106 cases were dismissed, proceedings were terminated in 12 cases, and 67 were either settled or withdrawn by the parties.

In the cases settled by labour relations officers and those in which Board awards were made, compensation amounting to \$616,459 was made to aggrieved employees, as well as offers of reinstatement in many cases. In the 29 cases in which violations of the Act were found by the Board, employers and unions were ordered to pay compensation to 54 employees for wages and benefits lost in a specified period, and 15 of these employees were also ordered reinstated.

In addition, employers in 10 cases were ordered to post a Board notice of the employees' rights under the Act, and cease and desist directions were issued to employers in 5 other cases.

Construction Industry Grievances

Grievances over alleged violation of the provisions of a collective agreement in the construction industry may be referred to the Board for resolution under section 124 of the Act. As with complaints of contraventions of the Act, the Board encourages voluntary settlement of these cases by the parties involved, with the assistance of a labour relations officer.

In 1988-89, the Board received 739 cases under this section. The principal issues in these grievances were alleged failure by employers to make required contributions to health and welfare, pension and vacation funds, failure to deduct union dues, and alleged violation of the subcontracting and hiring arrangements in the collective agreement.

In addition to the cases received, 137 were carried over from 1987-88. Of the total 876 processed, 529 were disposed of, proceedings were adjourned sine die in 235 cases, and 112 cases were pending at March 31, 1989.

In 479, or 91 percent, of the 529 dispositions, voluntary settlements and withdrawals of the grievance were obtained by labour relations officers, awards were made by the Board in 19 cases, 12 cases were dismissed, proceedings were terminated in 4 cases, and 15 were withdrawn or settled by the parties.

Payments totalling \$882,434 were recovered for unions and employees in the cases settled by labour relations officers and those in which Board awards were made.

MISCELLANEOUS APPLICATIONS AND COMPLAINTS

Right of Access

In 1988-89, the Board dealt with 3 applications in which the union sought access to the employer's property under section 11 of the Act. Access was granted in 1 case, and 2 were settled.

Religious Exemption

Sixteen applications were processed under section 47 of the Act, seeking exemption for employees from the union security provisions of collective agreements because of their religious beliefs. Three applications were granted, 5 were dismissed, 4 were withdrawn, proceedings were adjourned sine die in 3 cases, and 1 was pending at March 31, 1989.

Early Termination of Collective Agreements

Fifteen applications were processed under section 52(3) of the Act, seeking early termination of collective agreements. Consent was granted in 13 cases, and 2 were pending at March 31, 1989.

Union Financial Statements

Twelve complaints were dealt with under section 85 of the Act, alleging failure by trade unions to furnish members with audited financial statements of the union's affairs. Two cases were dismissed, 8 cases were withdrawn or settled, and 2 were pending at March 31, 1989.

Jurisdictional Disputes

Seventy-one complaints were dealt with under section 91 of the Act, involving union work jurisdiction. An assignment of the work in dispute was made by the Board in 2 cases, 2 cases were dismissed, 18 cases were settled or withdrawn, 1 was terminated, proceedings were adjourned sine die in 7 cases, and 41 cases were pending at March 31, 1989.

Determination of Employee Status

The Board dealt with 105 applications under section 106(2) of the Act, seeking decisions on the status of individuals as employees under the Act. Thirty-six cases were settled or withdrawn by the parties in discussions with labour relations officers (Table 4), and 12 were withdrawn or settled by the parties. Determinations were made by the Board in 5 cases, in which 16 of the 40 persons in dispute were found to be employees under the Act. Nine cases were dismissed, proceedings were adjourned sine die in 10 cases, and 33 cases were pending at March 31, 1989.

Referrals by Minister of Labour

In 1988-89, the Board dealt with 4 cases referred by the Minister under section 107 of the Act for opinions or questions related to the Minister's authority to appoint a conciliation officer under section 16 of the Act, or an arbitrator under sections 44 or 45. Determinations declaring the Minister's authority to appoint a conciliation officer were made in 3 cases, one case was dismissed.

One case was referred to the Board by the Minister under section 139(4) of the Act, concerning the designations of the employee and employer agencies in a bargaining relationship in

the industrial, commercial and institutional sector of the construction industry. The case was pending at March 31, 1989.

Trusteeship Reports

Three statements were filed with the Board during the year reporting that local unions had been placed under trusteeship.

First Agreement Arbitration

On May 26, 1986, section 40a was added to the *Labour Relations Act* to enable first collective agreements to be settled by arbitration. The process involves two stages: the parties must first apply to the Board for a direction to

arbitrate; then if the direction is granted, they may choose to have the settlement arbitrated by the Board or privately by a board of arbitration.

During 1988-89, the Board received 20 applications for directions to settle first agreements by arbitration. Directions were issued in 6 cases, 1 case was dismissed, 13 cases were settled or withdrawn, and proceedings were adjourned sine die in 3 cases. (Table 1).

Arbitration Provision

One application was made under section 44(3) asking the Board to modify the arbitration provision in a collective agreement. The case was terminated.

Occupational Health and Safety Act

In 1988-89, the Board received 110 complaints under section 24 of the *Occupational Health and Safety Act*, and 2 complaints under section 134(b) of the *Environmental Protection Act* alleging wrongful discipline or discharge for acting in compliance with the Acts. Nineteen cases were carried over from 1987-88.

Of the total 54 cases disposed of, 38 were settled or withdrawn by the parties in discussions with labour relations officers (Table 4.); six cases were granted, 9 were dismissed, and 1 was terminated.

Colleges Collective Bargaining Act

One complaint was dealt with under section 78 of the *Colleges Collective Bargaining Act*, alleging contraventions of the Act. The case was withdrawn.

Statistics on the cases under the *Colleges Collective Bargaining Act* dealt with by the Board are included under contravention of the Act in Table 1.

VIII BOARD PUBLICATIONS

The Ontario Labour Relations Board publishes the following:

The Ontario Labour Relations Board Reports: A monthly publication of selected Board decisions which also contains other information and statistics on proceedings before the Board.

A Guide to the Labour Relations Act: A booklet explaining in layperson's terms the provisions of the *Labour Relations Act* and the Board's practices. This publication is revised periodically to reflect current law and Board practices. The Guide is also available in French.

Monthly Highlights: A publication in leaflet form containing scope notes of significant Board decisions on a monthly basis. This publication also contains Board notices of interest to the industrial relations community and information relating to new appointments and other internal developments.

Pamphlets: To date the Board has published three pamphlets. Two of these, "Rights of Employees, Employers and Trade Unions" and "Certification by the Ontario Labour Relations Board", are available in English, French, Italian and Portuguese. The third pamphlet entitled "Unfair Labour Practice Proceedings before the Ontario Labour Relations Board", describes unfair labour practice proceedings before the Board and also contains useful instructions in filling out Form 58, which is used to institute proceedings.

All of the Board's publications may be obtained by calling, writing, or visiting the Board's offices. The Ontario Labour Relations Board Reports is available on annual subscriptions, (January - December issues inclusive) presently priced at \$45.00. Individual copies of the report may be purchased at the Government of Ontario Bookstore. Order forms for subscriptions are available from the Board.

IX STAFF AND BUDGET

At the end of the fiscal year 1988-89, the Board employed a total of 118 persons on a full-time basis. The Board has two types of employees. The Chair, Alternate Chair, Vice-Chairs and Board Members are appointed by the Lieutenant Governor in Council. The administrative, field and support staff are civil servants.

The total budget of the Ontario Labour Relations Board for the fiscal year was \$7,607,300.

II STATISTICAL TABLES

The following statistics are indicative of the activities of the Ontario Labour Relations Board during the fiscal year 1988-89.

Table 1:	Total Applications and Complaints Received, Disposed of and Pending, Fiscal Year 1988-89
Table 2:	Applications and Complaints Received and Disposed of, Fiscal Years 1984-85 to 1988-89
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Table 1

Total Applications and Complaints Received, Disposed of and Pending Fiscal Year 1988-89

Type of Case	Caseload		Disposed of, Fiscal Year 1988-89										Pending March 31, 1989
	Total	Pending April 1, 88	Received Fiscal Year 1988-89	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die	448	927	
Total	4,231	1,006	3,225	2,856	885	344	32	676	918	448	927		
Certification of Bargaining Agents	1,210	272	938	944	649	129	4	162	—	39	227		
Declaration of Termination of Bargaining Rights	242	65	177	209	102	41	2	62	2	3	30		
Declaration of Successor Trade Union	34	26	8	24	21	2	—	1	—	—	10		
Declaration of Successor Employer or Common Employer Status	329	92	237	140	21	20	2	25	72	40	149		
Accreditation	8	2	6	2	2	—	—	—	—	—	6		
Declaration of Unlawful Strike	5	—	5	4	—	1	—	1	2	1	—		
Declaration of Unlawful Lockout	3	1	2	2	—	—	1	—	1	—	1		
Direction respecting Unlawful Strike	60	6	54	39	4	2	4	11	18	17	4		
Direction respecting Unlawful Lockout	1	—	1	1	—	—	—	1	—	—	—		
Consent to Prosecute	10	6	4	9	—	2	—	5	2	—	1		
Contravention of Act	1,071	284	787	751	29	106	12	202	402	87	233		
Right of Access	3	1	2	3	1	—	—	—	2	—	—		
Exemption from Union Security Provision in Collective Agreement	16	2	14	12	3	5	—	4	—	3	1		
Early Termination of Collective Agreement	15	3	12	13	13	—	—	—	—	—	2		
Trade Union Financial Statement	12	4	8	10	—	2	—	5	3	—	2		
Jurisdictional Dispute	71	41	30	23	2	2	1	8	10	7	41	(Cont'd)	

(Cont'd)

Table 1 (Cont'd)

Total Applications and Complaints Received, Disposed of and Pending
Fiscal Year 1988-89

Type of Case	Caseload		Disposed of, Fiscal Year 1988-89								Pending March 31, 1989
	Total	Pending April 1, 88	Received Fiscal Year 1988-89	Total	Granted*	Dismissed	Termi- nated	With- drawn	Settled	Sine Die	
Total	4,231	1,006	3,225	2,856	886	344	32	676	918	448	927
Referral on Employee Status	105	40	65	62	5	9	—	21	27	10	33
Referral from Minister on Appointment of Conciliation Officer or Arbitrator	4	1	3	4	3	1	—	—	—	—	—
Referral of Construction Industry Grievance	876	137	739	529	19	12	4	153	341	235	112
Referral from Minister on Construction Bargaining Agency	1	1	—	—	—	—	—	—	—	—	1
Complaint under Occupational Health and Safety Act	129	19	110	53	6	9	1	9	28	3	73
Environmental Protection Act	2	—	2	1	—	—	—	—	1	—	1
First Agreement Arbitration Direction	23	3	20	20	6	1	—	6	7	3	—
Arbitration Provision	1	—	1	1	—	—	1	—	—	—	—

* Includes cases in which a request was granted or a determination made by the board.

Table 2

Applications and Complaints Received and Disposed of
Fiscal Years 1984-85 to 1988-89

Type of Case	Number Received in Fiscal Year						Number Disposed of in Fiscal Year					
	Total	1984-85	1985-86	1986-87	1987-88	1988-89	Total	1984-85	1985-86	1986-87	1987-88	1988-89
Total	17,130	3,509	3,236	3,577	3,583	3,225	15,117	2,866	2,912	3,371	3,112	2,856
Certification of bargaining Agents	5,270	1,148	1,025	1,034	1,125	938	5,077	985	1,034	1,006	1,108	944
Declaration of termination of bargaining Rights	817	155	155	171	159	177	807	139	135	191	133	209
Declaration of Successor trade union or employer	825	193	88	175	185	184	650	131	85	190	136	108
Declaration of common employer status	482	104	117	123	77	61	404	58	81	147	62	56
Accreditation	13	3	—	3	1	6	7	1	1	2	1	2
Declaration of unlawful strike or lockout	24	2	6	4	5	7	22	6	5	3	2	6
Direction respecting unlawful strike or lockout	258	39	52	63	49	55	191	31	36	49	35	40
Consent to prosecute	43	11	11	8	9	4	41	11	8	8	5	9
Contravention of Act	4,292	920	855	862	868	787	3,863	729	758	891	734	751
Referral of construction industry grievance	3,965	751	745	865	865	739	3,098	620	614	664	671	529
Miscellaneous	1,063	183	182	232	219	247	889	155	155	189	208	182
First Agreement Arbitration Direction	74	—	—	34	20	20	64	—	—	28	16	20
First Agreement Arbitration Proceedings	4	—	—	3	1	—	4	—	—	3	1	—

Table 3

Labour Relations Officer Activity in Cases Processed*
Fiscal Year 1988-89

Type of Case	Total Cases Assigned	Cases in Which Activity Completed			Referred to Board	Sine Die	Pending
		Total	Number Settled	Percent			
Total	2,063	1,432	1,277	89.2	155	287	344
Certification	486	463	397	85.7	66	5	18
Interim certificate	17	15	13	86.7	2	—	2
Pre-hearing application	75	66	60	90.9	6	—	9
Other application	394	382	324	84.8	58	5	7
Contravention of Act	695	464	408	87.9	56	60	171
Construction industry grievance	739	441	419	95.0	22	215	83
Employee status	37	26	24	92.3	2	4	7
Occupational Health and Safety Act	104	37	28	75.7	9	3	64
Environmental Protection Act	2	1	1	100.0	—	—	1

* Includes all cases assigned to labour relations officers, which may or may not have been disposed of by the end of the year.

Table 4

Labour Relations Officer Settlements in Cases Disposed of*
Fiscal Year 1988-89

Type of Case	Total Disposed of	Officer Settlements	
		Number	Percent of Dispositions
Total	1,396	1,090	78.1
Contravention of Act	751	537	71.5
Construction industry grievance	529	479	90.5
Employee status	62	36	58.1
Occupational Health and Safety Act	53	37	70.0
Environmental Protection Act	1	1	100.0

* Includes only cases in which labour relations officers play the leading role in the processing of the case. The figures refer to cases disposed of during the year and should not be confused with data for the same types of cases in Table 3. Table 3 refers to new assignments of cases made to labour relations officers during the year which may or may not have been disposed of by the end of the year.

Table 5

Results of Representation Votes Conducted*
Fiscal Year 1988-89

Type of Case	Number of Votes	Eligible Employees	Ballots Cast	
			Total	In Favour of Unions
Total	239	14,049	10,516	5,635
Certification	169	12,516	9,186	5,213
Pre-Hearing Cases				
One Union	46	4,906	3,245	1,746
Two Unions	36	3,421	2,293	1,486
Three Unions	2	263	251	251
Construction Cases				
One Union	11	127	101	16
Two Unions	3	30	29	14
Regular Cases				
One Union	63	3,436	2,996	1,430
Two Unions	7	329	268	267
Two Unions, with "no union" choice	1	4	3	3
Termination of Bargaining Rights	69	1,438	1,237	329
Successor Employer				
Two unions	1	95	93	93

* Refers to all representation votes conducted and the results counted during the fiscal year, regardless of whether or not the case was disposed of during the year.

Table 6

Results of Representation Votes in Cases Disposed of* Fiscal Year 1988-89

Type of Case	Number of Votes			Eligible Votes			All Ballots Cast			Ballots Cast in Favour of Unions		
				In Votes			In Votes			In Votes		
	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost	Total	Won	Lost
Total	215	86	129	12,336	6,559	5,777	9,117	4,599	4,518	4,686	3,221	1,465
Certification	145	79	66	10,786	6,174	4,612	7,803	4,259	3,544	4,264	2,986	1,278
Pre-hearing Cases												
One Union	38	20	18	4,231	2,853	1,378	2,712	1,496	1,216	1,405	981	424
Two Unions	29	25	4	3,139	1,702	1,437	2,167	1,393	774	1,362	301	—
Three Unions	2	2	—	263	263	—	251	251	—	159	159	—
Construction Cases												
One Union	10	1	9	131	4	127	107	4	103	19	2	17
Two Unions	3	2	1	19	8	11	14	4	10	9	6	3
Regular Cases												
One Union	55	21	34	2,671	1,012	1,659	2,276	835	1,441	1,065	532	533
Two Unions	7	7	—	328	328	—	273	273	—	242	242	—
Two Unions, with "no union" choice	1	1	—	4	4	—	3	3	—	3	3	—
Termination of Bargaining	69	6	63	1,455	290	1,165	1,221	247	974	329	142	187
Successor Employer												
Two Unions	1	1	—	95	95	—	93	93	—	93	93	—

* Refers to final representation votes conducted in cases disposed of during the fiscal year. This Table should not be confused with Table 5 which refers to all representation votes conducted during the year regardless of whether or not the case was disposed of during the year.

Table 7

Time Required to Process Applications and Complaints Disposed of, by Major Type of Case Fiscal Year 1988-89

Time Taken (Calendar Days)	All Cases			Certification Cases			Section 89 Cases			Section 124 Cases			All Other Cases		
	Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent		Dispo- sitions	Cumu- lative Percent	
Total	2,856	100.0		944	100.0		751	100.0		529	100.0		632	100.0	
Under 8 days	62	2.2		12	1.3		18	2.4		7	1.3		25	4.1	
8-14 days	217	9.8		35	5.0		36	7.2		123	24.6		23	7.6	
15-21 days	331	21.2		90	14.5		47	13.4		168	56.3		26	10.7	
22-28 days	250	29.9		140	29.4		45	19.4		31	62.2		34	15.4	
29-35 days	251	38.7		138	44.1		68	28.5		17	65.4		28	19.9	
36-42 days	210	46.1		108	55.4		48	34.9		20	69.2		34	25.5	
43-49 days	131	50.7		51	60.8		44	40.7		10	71.1		26	29.6	
50-56 days	122	55.0		41	65.2		32	45.0		15	73.9		34	35.1	
57-63 days	104	58.6		39	69.3		24	48.2		15	76.7		26	39.2	
64-70 days	99	62.1		35	73.0		28	51.9		8	78.3		28	43.7	
71-77 days	75	64.7		30	76.2		21	54.7		7	79.6		17	46.3	
78-84 days	80	67.5		22	78.6		31	58.9		5	80.5		22	49.9	
85-91 days	68	69.9		18	80.5		28	62.6		9	82.2		13	52.1	
92-98 days	52	71.8		13	81.8		15	64.6		6	83.4		18	55.0	
99-105 days	51	73.6		13	83.2		19	67.1		5	84.3		14	57.3	
106-126 days	132	78.2		30	86.3		47	73.4		15	87.1		40	63.9	
127-147 days	103	81.8		21	88.5		37	78.3		13	89.6		32	68.8	
148-168 days	69	84.2		12	89.8		25	81.6		3	90.2		29	73.6	
over 168 days	449	100.0		96	100.0		138	100.0		52	100.0		163	100.0	

Table 8

**Union Distribution of Certification Applications Received and Disposed of
Fiscal Year 1988-89**

Union	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed**	Withdrawn
All Unions	938	944	649	133	162
CLC* Affiliates	381	387	286	53	48
Aluminum Brick & Glass Wkrs.	2	3	2	1	—
Bakery & Tobacco Wkrs.	1	2	2	—	—
Brewery and Soft Drink Wkrs.	4	3	2	1	—
Canadian Auto Workers	41	44	36	5	3
Canadian Paperworkers	7	6	4	1	1
Canadian Public Employees (CUPE)	42	46	36	5	5
CLC Directly Chartered	2	3	3	—	—
Clothing and Textile Workers	3	3	2	1	—
Communications Workers (Amer)	3	3	2	—	1
Communications-Electrical Wkrs.	—	1	1	—	—
Electrical Workers (UE)	3	3	2	1	—
Energy and Chemical Workers	7	6	3	—	3
Food and Commercial Workers	31	33	24	5	4
Glass, Pottery & Plastic Wkrs.	2	1	1	—	—
Graphic Communications Union	11	10	6	2	2
Hotel Employees	16	15	10	2	3
IWA-Canada	9	10	6	3	1
Ladies Garment Workers	2	2	1	—	1
Machinists	7	5	4	—	1
Newspaper Guild	5	2	2	—	—
Novelty Workers	1	1	—	1	—
Office and Professional Employees	6	7	7	—	—
Ontario Public Service Employees	23	22	20	1	1
Postal Workers	1	1	1	—	—
Public Service Alliance	1	2	1	—	1
Railway, Transport and General Workers	4	4	2	—	2
Retail Wholesale Employees	32	33	22	6	5
Rubber Workers	2	2	2	—	—
Service Employees International	49	44	32	4	8
Technical Engineers	1	1	1	—	—
Theatrical Stage Employees	2	—	—	—	—
Transit Union (Intl.)	2	1	—	—	1
United Paperworkers	1	—	—	—	—
United Steelworkers	56	60	42	13	5
United Textile Workers	1	2	1	1	—
Woodworkers	1	6	6	—	—

* Canadian Labour Congress.

** Includes cases that were terminated.

Table 8 (Cont'd)

Non-CLC Affiliates	557	557	363	80	114
Allied Health Professionals	2	1	1	—	—
Asbestos Workers	2	3	2	1	—
Boilermakers	7	6	5	1	—
Bricklayers International	4	4	2	1	1
Carpenters	65	68	33	17	18
Canadian Educational Workers	1	2	1	—	1
Canadian Operating Engineers	3	3	1	2	—
Canadian Telephone Employees	1	1	1	—	—
Canadian Transit Union	12	4	3	—	1
Christian Labour Association	13	14	11	1	2
Electrical Workers (IBEW)	18	11	7	1	3
Elevator Constructors	1	1	—	—	1
Engineers Association	1	1	—	—	1
Guards Association	8	2	1	1	—
Independent Local Union	21	21	10	2	9
International Operating Engineers	56	66	46	8	12
Labourers	139	128	86	10	32
Ontario English Catholic Teachers	—	2	2	—	—
Ontario Nurses Association	35	39	33	3	3
Ontario Public School Teachers	7	5	2	1	2
Ontario Secondary School Teachers	15	19	16	2	1
Painters	20	21	16	2	3
Plant Guard Workers	9	8	5	3	—
Plumbers	27	29	17	3	9
Sheet Metal Workers	5	8	6	1	1
Structural Iron Workers	11	11	5	3	3
Sudbury Mine Workers	2	2	1	—	1
Teamsters	61	58	36	14	8
Textile & Chemical Union	1	1	1	—	—
Textile Processors	6	8	6	1	1
United Auto Workers	4	7	4	2	1
Other	—	3	3	—	—

Table 9

**Industry Distribution of Certification Applications Received and Disposed of
Fiscal Year 1988-89**

Industry	Number of Appli- cations Received	Number of Applications Disposed of			
		Total	Certified	Dismissed*	Withdrawn
All Industries	938	944	649	133	162
Manufacturing	197	212	149	37	26
Food, beverages	16	20	12	5	3
Tobacco products	—	—	—	—	—
Rubber, plastics	12	15	11	2	2
Leather	—	1	—	1	—
Textile	5	6	3	3	—
Knitting mills	—	—	—	—	—
Clothing	3	6	5	1	—
Wood	14	14	11	3	—
Furniture and fixtures	6	6	5	—	1
Paper	3	3	2	—	1
Printing, publishing	19	16	10	3	3
Primary metals	7	9	5	3	1
Fabricated metals	28	29	23	4	2
Machinery	4	6	4	2	—
Transportation equipment	21	27	23	2	2
Electrical products	13	12	10	—	2
Non-metallic minerals	29	30	16	7	7
Petroleum, coal	1	—	—	—	—
Chemicals	4	4	3	—	1
Other manufacturing	12	8	6	1	1
Non-Manufacturing	741	732	500	96	136
Agriculture	1	1	—	1	—
Forestry	1	3	2	1	—
Fishing, trapping	—	—	—	—	—
Mining, quarrying	4	5	2	1	2
Transportation	27	28	14	10	4
Storage	3	3	3	—	—
Communications	—	—	—	—	—
Electric, gas, water	5	3	2	1	—
Wholesale trade	22	24	16	4	4
Retail trade	35	30	22	5	3
Finance, insurance	7	8	7	1	—
Real Estate	17	12	9	1	2
Education, related services	48	54	41	4	9
Health and welfare services	148	147	117	15	15
Religious organizations	1	1	1	—	—
Recreational services	4	3	2	1	—
Management services	19	9	5	2	2
Personal services	8	7	5	2	—
Accommodation, food services	33	33	20	4	9
Other services	27	22	15	1	6

Table 9 (Cont'd)

Federal government	1	1	—	—	1
Provincial government	—	—	—	—	—
Local government	17	12	7	—	5
Other government	—	2	2	—	—
Construction	313	324	208	42	74

* Includes cases that were terminated.

Table 10

**Size of Bargaining Units in Certification Applications Granted
Fiscal Year 1988-89**

Employee Size*	Total		Construction**		Non-Construction	
	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees	Number of Appli- cations	Number of Em- ployees
Total	649	21,440	205	1,458	444	19,982
2-9 employees	287	1,420	165	758	122	662
10-19 employees	129	1,775	29	341	100	1,434
20-39 employees	95	2,605	9	256	86	2,349
40-99 employees	80	4,857	2	103	78	4,754
100-199 employees	41	5,443	—	—	41	5,443
200-499 employees	16	4,727	—	—	16	4,727
500 employees or more	1	613	—	—	1	613

* Refers to the total number of employees in one or more bargaining units certified in an application. A total of 711 bargaining units were certified in the 649 applications in which certification was granted.

** Refers to cases processed under the construction industry provisions of the Act. This figure should not be confused with the 208 certified construction industry applications shown in Table 9, which includes all applications involving construction employers whether processed under the construction industry provisions of the Act or not.

Table 11
Time Required to Process Certification Applications Granted*
Fiscal Year 1988-89

Calendar Days	Total Certified		Non-Construction		Construction	
	Number	Cumulative Per Cent	Number	Cumulative Per Cent	Number	Cumulative Per Cent
Total	649	100.0	444	100.0	205	100.0
8-14 days	22	3.4	4	0.9	18	8.8
15-21 days	64	13.3	14	4.1	50	33.2
22-28 days	111	30.4	79	21.8	32	48.8
29-35 days	113	47.8	98	43.9	15	56.1
36-42 days	90	61.6	79	61.7	11	61.5
43-49 days	39	67.6	32	68.9	7	64.9
50-56 days	23	71.2	17	72.7	6	67.8
57-63 days	26	75.2	19	77.0	7	71.2
64-70 days	22	78.6	19	81.3	3	72.7
71-77 days	19	81.5	12	84.0	7	76.1
78-84 days	10	83.1	7	85.6	3	77.6
85-91 days	13	85.1	8	87.4	5	80.0
92-98 days	5	85.8	3	88.1	2	81.0
99-105 days	6	86.7	6	89.4	—	—
106-126 days	20	89.8	10	91.7	10	85.9
127-147 days	12	91.7	7	93.2	5	88.3
148-168 days	9	93.1	5	94.4	4	90.2
over 168 days	45	100.0	25	100.0	20	100.0

* Refers only to applications in which certification was granted. This table should not be confused with Table 7 which refers to all certification applications disposed of during the year regardless of the method of disposition.

Table 12

Employment Status of Employees in Bargaining Units Certified by Industry

Industry	All Units			Full-time			Part-time			Full-time and Part-time			All Employees No Exclusion Specified		
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	
All Industries	711	21,440	177	7,016	33	2,389	95	3,409	406	8,626					
Manufacturing	158	8,909	60	3,246	1	3	28	1,839	69	3,821					
Food, Beverages	13	520	8	435	—	—	2	22	3	63					
Rubber, Plastics	11	540	4	206	—	—	1	5	6	32					
Textile	3	142	2	131	—	—	1	11	—	—					
Clothing	5	277	3	170	—	—	—	—	2	107					
Wood	12	649	4	130	—	—	3	192	5	327					
Furniture, Fixtures	6	386	3	205	—	—	1	159	2	22					
Paper	2	61	—	—	—	—	—	—	2	61					
Printing, Publishing	14	270	6	184	1	3	3	45	4	38					
Primary Metals	6	199	1	25	—	—	1	123	4	51					
Fabricating Metals	23	1,756	9	630	—	—	4	570	10	556					
Machinery	4	236	—	—	—	—	—	—	4	236					
Transportation Equipment	24	1,368	8	563	—	—	6	348	10	457					
Electrical Products	10	1,485	3	208	—	—	2	287	5	990					
Non-metallic Minerals	16	498	3	91	—	—	3	34	10	373					
Chemicals	3	101	2	58	—	—	1	43	—	—					
Other Manufacturing	6	421	4	210	—	—	—	—	2	211					
Non-Manufacturing	553	12,531	117	3,770	32	2,386	67	1,570	337	4,805					
Forestry	2	61	—	—	—	—	—	—	2	61					
Mining, Quarrying	2	26	—	—	—	—	—	—	2	26					
Transportation	17	376	8	104	—	—	2	16	7	256					
Storage	3	31	2	28	—	—	—	—	1	3					
Electric, Gas, Water	2	7	2	7	—	—	—	—	—	—					
Wholesale Trade	16	279	6	94	—	—	2	47	8	138					
Retail Trade	26	599	11	159	1	15	6	120	8	305					
Finance, Insurance Carriers	6	51	1	4	1	2	1	13	3	32					
Real Estate, Insurance Agencies	9	35	2	10	—	—	1	2	6	23					
Education, Related Services	43	2,910	8	497	11	1,705	5	260	19	448					
Health, Welfare Services	154	4,770	49	2,029	17	581	35	654	53	1,506					
Religious Organizations	1	19	1	19	—	—	—	—	—	—					
Recreational Services	4	93	2	47	—	—	2	46	—	—					
Management Services	5	259	3	132	—	—	2	127	—	—					
Personal Services	5	179	4	148	—	—	—	—	1	31					
Accommodation, Food Services	25	851	9	412	1	3	8	254	7	182					
Other Services	16	180	3	36	—	—	3	31	10	113					
Local Government	7	172	5	35	1	80	—	—	1	57					
Other Government	2	17	1	9	—	—	—	—	1	8					
Construction	208	1,616	—	—	—	—	—	—	208	1,616					

Table 13

Employment Status of Employees in Bargaining Units Certified by Union

Fiscal Year 1988-89

Union	All Units		Full-time		Part-time		Full-time and Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
All Unions	711	21,440	177	7,016	33	2,389	95	3,409	406	8,626
CLC	294	11,004	106	4,447	14	479	69	2,089	105	3,989
Aluminum Brick and Glass Workers	2	30	1	12	—	—	1	18	—	—
Bakery and Tobacco Workers	2	123	2	123	—	—	—	—	—	—
Brewery and Soft Drink Workers	2	33	—	—	—	—	—	—	2	33
Canadian Paperworkers	4	208	1	108	—	—	1	22	2	78
Canadian Public Employees (CUPE)	46	1,677	16	476	6	253	10	427	14	521
CLC Directly Chartered	3	30	—	—	1	2	—	—	2	28
Clothing and Textile Workers	2	33	1	22	—	—	1	11	—	—
Communications-Electrical Workers	1	123	—	—	—	—	1	123	—	—
Electrical Workers (UE)	3	138	1	116	—	—	—	—	2	22
Energy and Chemical Workers	3	147	1	88	—	—	1	5	1	54
Food and Commercial Workers	31	898	17	472	1	15	7	118	6	293
Glass, Molder and Allied Workers	1	300	—	—	—	—	—	—	1	300
Graphic Communications Union	8	189	3	123	—	—	2	38	3	28
Hotel Employees	13	440	4	132	1	3	5	195	3	110
Ladies Garment Workers	1	50	—	—	—	—	—	—	1	50
Machinists	5	317	2	148	—	—	2	149	1	20
Newspaper Guild	3	19	1	10	1	3	—	—	1	6
Office and Professional Employees	6	104	1	4	—	—	—	—	5	100
Ontario Liquor Board Employees	31	1,233	9	601	4	203	13	260	5	169
Ontario Public Service Employees	1	31	—	—	—	—	—	—	1	31
Public Service Alliance	1	9	1	9	—	—	—	—	—	—
Railway, Transport and General Workers	2	67	2	67	—	—	—	—	—	—
Retail Wholesale Employees	27	840	9	310	—	—	9	210	9	320
Rubber Workers	2	20	1	6	—	—	—	—	1	14
Service Employees International	39	1,489	16	939	—	—	10	167	13	383
Theatrical Stage Employees	1	4	—	—	—	—	1	4	—	—
United Auto Workers	4	54	3	24	—	—	—	—	1	30
United Steelworkers	43	2,076	14	657	—	—	5	342	24	1,077
United Textile Workers	1	42	—	—	—	—	—	—	1	42
Woodworkers	6	280	—	—	—	—	—	—	6	280

Table 13 (Cont'd)

Employment Status of Employees in Bargaining Units Certified by Union

Fiscal Year 1988-89

Union	All Units		Full-time		Part-time		Full-time and Part-time		All Employees No Exclusion Specified	
	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.	Number	Empls.
Non-CLC	417	10,436	71	2,569	19	1,910	26	1,320	301	4,637
Air Crew Association	2	8	1	4	—	—	1	4	—	—
Allied Health Professionals	1	8	—	—	—	—	1	8	—	—
Asbestos Workers	2	9	—	—	—	—	—	—	2	9
Boilermakers	5	37	—	—	—	—	—	—	5	37
Bricklayers International	2	28	1	26	—	—	—	—	1	2
Carpenters	33	332	2	24	—	—	—	—	31	308
Canadian Auto Workers	36	3,744	11	1,016	—	—	8	1,094	17	1,634
Canadian Educational Workers	1	128	1	128	—	—	—	—	—	—
Canadian Operating Engineers	1	4	—	—	—	—	—	—	1	4
Canadian Telephone Employees	1	13	—	—	—	—	1	13	—	—
Canadian Transit Union	3	21	—	—	—	—	3	47	8	102
Christian Labour Association	13	169	2	20	—	—	—	—	—	—
Communications Workers (AMER)	2	59	2	59	—	—	—	—	—	—
Electrical Workers (IBEW)	7	75	1	2	—	—	—	—	6	73
Guards Association	1	6	—	—	—	—	—	—	1	6
Independent Local Union	10	372	4	279	—	—	1	30	5	63
International Operating Engineers	46	307	2	11	—	—	—	—	44	296
IWA-Canada	6	122	2	74	—	—	—	—	4	48
Labourers	87	688	2	20	—	—	2	5	83	663
Multi-Union	1	59	—	—	—	—	—	—	1	59
Ontario English Catholic Teachers	2	215	—	—	2	215	—	—	—	—
Ontario Nurses Association	43	1,032	14	244	9	217	2	8	18	563
Ontario Public School Teachers	2	776	—	—	2	776	—	—	—	—
Ontario Secondary School Teachers	16	886	1	9	6	702	1	27	8	148
Painters	16	84	—	—	—	—	—	—	16	84
Plant Guard Workers	5	135	2	88	—	—	3	47	17	138
Plumbers	17	138	—	—	—	—	—	—	5	17
Sheet Metal Workers	6	21	1	4	—	—	—	—	5	26
Structural Iron Workers	5	26	—	—	—	—	—	—	1	19
Sudbury Mine Workers	2	24	1	5	—	—	—	—	17	263
Teamsters	36	558	16	258	—	—	3	37	1	18
Textile & Chemical Union	1	18	—	—	—	—	—	—	1	36
Textile Processors	6	334	5	298	—	—	—	—	—	—

*Ontario Labour Relations Board,
400 University Avenue,
Toronto, Ontario*

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